Ancient Hindu
S245.8a
VYAVASTHÁ-DARPANA,

A DIGEST

OF

THE HINDU LAW

AS CURRENT IN BENGAL.

WITH AUTHORITIES, EXPLANATORY NOTES &C. ALSO ADMITTED LEGAL
OPINIONS, AND DECIDED CAUSES BEARING UPON THE
VYAVASTHÁS OR PRINCIPLES.

BY

SHAMACHURN SIRCAR

CHIEF INTERPRETER OF THE HIGH COURT, MEMBER OF THE ASIATIC SOCIETY IN CALCUTTA
AND AUTHOR OF AN ENGLISH BENGALI GRAMMAR, &C.

SECOND EDITION
ENLARGED AND IMPROVED.

Complete in one Volume.

"Law is the king of kings, far more powerful and rigid than any other thing: nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

A text of the Veda translated by Sir W. Jones according to the gloss of Sankara.

CALCUTTA,

PRINTED AT THE GIRISH-VIDYARATNA PRESS, MIRZAPUR,
UPPER CIRCULAR ROAD NO. 58—5.

[Price 12 Rupees,]

1867
ERRATA CORRIGENDA.

Page I, Line 21 summary of contents, for 202 read 209.

" V " 11 " for "adoption" read adopted son.

" 127 " 34 heading, for "Apárñā" read "Apárvā."

" 221 " 29 foot note, for "pp. 5143,514 read pp. 513,514."

" 233 " 28 body, for "Rám Gosálā" read "Rám-joy Gosálā.'s-

" 260 " 30 " " paternal grand father's" read "matern-

al grandfather's."

" 281 " 38 " " father's daughter's son" read "grand-
father's daughter's son."

" 479 marginal note, for "Nos. 285,295&296 read Nos. 284,295-

&296.

" 514 Line 19 body, for "we" read "he."

" 553 marginal note, for "No. 352" read "No. 351"

" 629 Line 1 for "Vyavasthā No. 181" read "Vyavasthā

No. 381."

" " 2 " " Vyavasthā No. 182" read "Vyavasthā

No. 382"

" 958 " 27 foot note, for "see the second at page 657" read:

"the second note at page 657."
OPINIONS.


Baboo Shama Churn Sircar

MY DEAR SIR,

I am extremely sorry that pressure of business has prevented me from examining your book as attentively as I wished and still hope to do. The passages at which I have looked seem to me to afford very satisfactory proof of your industry, research, and learning: and I hope that you will soon find time to complete a work which will, I think, do you credit, and be useful to all who in this country are concerned in the administration of justice or the exposition of Hindoo law.

18th March 1859.

Yours very faithfully

James Wm. Colvile.

DEAR SIR,

I thank you for the precious present of a copy of the first volume of your Vyavasthó-Darpana. On a cursory perusal of several portions of the work, I am justified in pronouncing it to be an indispensible companion to the judge, the pleader, and the legal student in Bengal. I cannot sufficiently admire the spirit of research, zeal, and industry with which you have collected useful information from varied and scattered sources, and the talent you have displayed in their judicious arrangement, whereby you have rendered the most intricate branch of the Hindoo law level to all capacities and the most easy of reference. You have quoted the most reputed Sanscrit authorities of the Bengal school and given literal and terse Bengali versions.

I fully concur with you in believing that a vernacular translation of a comprehensive Digest of the Hindoo law will, in a great measure, correct the evil of the non-discussion of any points of this law in the lower courts, and deeply regret that, owing to an unfortunate circumstance, the continuation of Macnaghten’s Precedents down to the present time, is impracticable.

I conclude with recommending the work to public patronage and expressing a hope that the success of your present undertaking will incite you to further useful pursuits.

Sukkachara, 18th December 1859.

Your obedient servant

Radha Kaunt.
PREFACE

TO THE FIRST EDITION.

The Hindoo Law is, according to our belief, of divine origin. It is termed Smriti (remembrance) or what was remembered, in contradistinction to the Veda, which is denoted Sruti (audition) or what was heard.* The Smriti was revealed by the Self-Existent to Manu, who remembered and taught it to Marichi and nine other sages,† one of whom, Bhrigu, being appointed by Manu to promulgate his laws, communicated the whole to the Rishis.‡

The Smriti comprises three kandas or adhyayas (books or parts.) The āchāra (ritual,) which comprises rules for the observance of religious rites and ceremonies, social usages, and moral duties of the different castes; the nyāyabhāra (civil acts and rules,) which embraces as well forensic law and practice as rules of private acts and contests; and the Prāyakchitta (expiation,) which prescribes the atonement or religious penalty for sin. The general body of law comprehending all these is denominated the Dharma Śāstra.

The Dharma Śāstra is to be sought primarily in the Sanhitās (collections or institutes) of the holy sages, whose number according to the list given by Jānyavaleya is twenty: namely, Manu, Atri (a), Vishnu (b), Hárta, Jānyavaleya or Yājñavaleya (c), Usháná (d), Angirā (e), Jāma or Yama (f), Apastamba, Samvatsa, Kátyāyana,

* By these terms, it is signified that in the Veda the words of revelation are preserved, while in the system of law the sense is recorded either in the divine words or other equivalent expressions. The Veda chiefly concerns religion, but contains a few passages directly applicable to jurisprudence.

† Maruch, Atri, Angirā, Pulastya, Pulaha, Kratū, Pracheta, Vasishtha, Bhrigu, and Nārada. These are denominated Prajāpati, or lords of created beings. See Manu, ch. i. v, 35–40 and 57–60.

‡ Vās Manu, ch. i. v. 57–60.

(a) One of the ten lords of created beings, and father of Dattā-Treya, Durvāsā and Soma.

(b) Not the Indian divinity, but an ancient philosopher who bore that name.

(c) Grandson of Brahmā, as described in the introduction of his own institutes.

(d) Usháná is another name of Śukra, the regent of the planet Venus; he was grandson of Bhrigu.

(e) Angirā holds a place among the ten lords of created beings, and according to the Mahāvata became father of Ulātṛṣa and of Viśnupati in the reign of the second Manu.

(f) Brother of the seventh Manu and ruler of the world below
Besides the usual matters treated of in a code of laws, the *Laghu Sankitá* of Manu, which comprises in all 2,685 shlokas or couplets, and is divided into twelve chapters, comprehends a system of cos-divine code to you without omission; for that sage learned from me to recite the whole of it (59.) Buriou great and wise, having thus been appointed by Manu to promulgate his laws, addressed all the *Rishis* with an affectionate mind, saying: 'Hear! (60): From this Manu, named Swáyamsvará, or spring from the Self-existent, came six descendants, other Manus, or perfectly understanding the scripture, each giving birth to a race of his own, all exalted in dignity, eminent in power (61): Swárochishà, Outami, Támar, Bhisáta likewise and Chákshushá, beaming in glory, and Voivaswata, child of the sun (62). The seven Manus, (who are to be followed by seven more) of whom Swáyamabhúva is the chief, have produced and supported this world of moving and stationary beings each in his own antara, or the period of his reign (63).

"We cannot but remark that the word Manu (Manu) has no relation whatsoever to the moon, and that it was the seventh, not the first of that name, whom the Brahmans believe to have been preserved in an ark from the general deluge: him they call the child of the sun, to distinguish him from our legislator, but they assign to his brother Yama the office (which the Greeks were pleased to confer on Minoe) of judge in the shades below." Sir William Jones's preface to Manu, p. x.

Dr. Max Muller, at the conclusion of his letter to Mr. Morley, says:—"It is evident that the author of the metrical code of law speaks of the old Manu as of a person different from himself, when he says (Ch. X. v. 63): "Not to kill, not to lie, not to steal, to keep the body clean and restrain the senses; this was the short law which Manu proclaimed amongst the four castes." Seeing Manu spoken of in the third person, he conjectures that the author of the metrical code of Mánava Dharma Shástra was not the first of all the Manus. It arises from his not bearing in mind that the laws of Manu were rehearsed to the Rishis by Buriou, who of course mentions Manu in the third person; consequently it was quite consistent that this sage, after imparting the dictum of Manu as in the verse cited, should say: "this was the law which Manu proclaimed amongst the four castes." Thus another Manu is not the author of the code speaking of the old Manu as a different person from himself, but it is Buriou who does so. Besides, it was an ordinary custom with the ancient sages to refer to themselves in the third person. And it will appear on reference to Manu Chapter I. verses 58, 57, 58, 59, and 60, above cited, that the first Manu, who is Swáyamsvará (sprung from the Self-existent) learnt the law from Bráhmá and taught it to the ten holy sages including Buriou, who, appointed by Manu to promulgate his laws, repeated the divine code to the Rishis. It is moreover asserted in the preface to the Sankitá of Nárada, a son of the Swáyamsvará, that the same Manu, having composed his code in a hundred thousand shlokas or couplets, arranged under twenty-four heads in a thousand chapters, delivered the work to Nárada, the sage among gods. Thus there can be no doubt that the author of the (written) *Manu-sankitá* was the first of all the Manus; and it appears from the above verses that Laghu *Manu-sankitá* which we see was taught to, and rehearsed by, Buriou.

Various dates have been suggested by the European scholars who have endeavoured to ascertain the period of the composition of the code of Manu's laws. Cheséy and Deslongchamps, the latter of whom professes to have formed his opinion from an examination of the code itself, conceive that it was composed in the 18th century previous to the Christian
mogony, the doctrines of metaphysics, precepts regulating the conduct, rules for religious and ceremonial duties, pious observances, and expiation, and abstinence, moral maxims, regulations concerning things

era. Schlegel gives it as his decided and well considered opinion, 'quod multorum anse-

rum meditatio esse decuit,' that the laws of Manu were promulgated in India at least as early

as the seventh century before Alexander the Great, or about a thousand years before

Christ. He places the Ramayana of Valmiki at about the same date, and doubts which

of them was the older. Elphinstone, who is inclined to attribute great antiquity to the

institutes of Manu on the ground of difference between the laws and manners therein

recorded and those of modern times, and from the proportion of the changes which took

place before the invasion of Alexander the Great, infers that a considerable period had

elapsed between the promulgation of the code and the latter epoch; and he fixes the pro-

bable date of Manu, to use his own words 'very loosely' somewhere about half way

between Alexander (in the fourth century before Christ,) and the Vedas (in the fourteenth.)

Professor Wilson thinks that the work of Manu, as we now possess it, is not of so ancient

a date as the Ramayana; and that it was most probably composed about the end of the

third or commencement of the second century before Christ. Sir William Jones's inference,

founded on a consideration of the style, is however opposed to the learned Professor's con-

clusion. Sir William says, and with reason too: "the Sanscrit of the three Vedas, that

of the Maham Dharmashastra, and that of the Puranas (of which Ramayana is one,) differ from each other in pretty exact proportion to the Latin of Numa, from whose laws

entire sentences are preserved, that of Appius which we see in the fragments of the twelve

tables, and that of Cicero or of Lucretius, where he has not affected an obsolete style: if

the several changes, therefore, of the Sanscrit and Latin took place, as we may fairly assume,
in times very nearly proportional, the Vedas must have been written about three hundred

years before these institutions and about six hundred years before the Puranas." He then

remarks: "the dialect of Manu is even observed in many passages to resemble that of the

Vedas, particularly in a departure from the more modern grammatical forms, whence it

must at first view seem very probable that the laws now brought to light were considerable

older than those of Solon or even of Lycurgus, although the promulgation of them

before they were reduced to writing might have been coeval with the first monarchies

established in Asia." Upon such and other grounds he fixes the date of the actual text at

about the year 1200 before Christ. Thus these opinions as to the date of the institutes of

Manu, being founded not on any historical or positive proof, but mere conjecture, are, as

might have been expected, contradictory and quite inconclusive. Now if the sage Narada

be believed, he asserts in the preface to his law tract, that Manu, having composed the

laws of Brahma in a hundred thousand sabhas or couples, arranged under twenty-four

heads in a thousand chapters, delivered the work to him (Narada, the sage among gods,) who

abridged it for the use of mankind in twelve thousand verses, and gave them to the

son of Bhrgu named Su-Mat, who, for the greater ease of the human race, reduced them
to four thousand. Hence it appears that the Vrtha (large) Manu-sambhid was composed by

Manu himself. The abridged metrical code of Manu-sambhid in question, appears also

from the text of the very work to have been composed during Manu's time, (as will be

known from the verses 58, 59, and 60, already cited.) It remains to determine the epoch

of Manu's existence. This in the absence of other evidence should be believed to be the

same as stated in the Manu-sambhid before us, that is, he flourished in the beginning of the
political, military, and commercial, the doctrine of rewards and punishments after death, and the transmigration of souls together with the means of attaining eternal beatitude.

The other sages wrote Sanhitás on the same model, and they all cited Manu for authority, whose Sanhitá must therefore be fairly considered to be the basis of all the text-books on the system of Hindu jurisprudence. The law of Manu was so much revered even by the sages that no part of their codes was respected if it contradicted Manu.

world, being progenitor of the races human and divine.—see Ch. I. vs. 11, 32, 33, 34, 35, and 36.

Sir William Jones, after saying we cannot but admit that Minos, Menes, or Mnevis have only Greek terminations, but that the crude noun is composed of the same radical letters both in Greek and Sanscrit, and leaving others to determine whether our Mnevis (or Mene in the nominative,) the son of Brahma, was the same personage with Minos the son of Jupiter and the legislator of the Cretans (who also is supposed to be the same with Mnevis spoken of as the first lawgiver receiving his laws from the chief Egyptian deity Hermes, and Menes the first king of the Egyptians) remarks: "Dwarkachok was persuaded, and not without sound reason, that the first Manu of the Brhadárasa could be no other person than the progenitor of mankind, to whom Jews, Christians, and Musulmans unite in giving the name of Adam."

The learned writer further remarks:—"The name of Manu (like Mene, men, and mind,) is clearly derived from the root (maa or men) to understand, and it signifies, as all the Pandits agree, 'intelligent,' particularly in the doctrines of the Vedas, which the composer of our Dharma Sástra must have studied very diligently, since great numbers of its texts changed only in a few syllables for the sake of the measure, are interspersed through the work. A spirit of sublime devotion, of benevolence to mankind, and of amiable tenderness to sentient creatures pervades the whole work; the style of it has a certain austere majesty that sounds like the language of legislation and extorts respectful awe; the sentiments of independence on all beings but God, and harsh admonitions even to kings, are truly noble; and the panegyrics on the Gúndúrī, the mother (as it is called) of the Vedas, prove the author to have adored (not the visible material sun, but) that divine incomparable greater light, (to use the words of the most venerable text of Indian Scripture,) which illumines all, delights all, from which all proceed, to which all must return, and which alone can eradicate (not our visual organs merely, but) our souls and our intellects."

Mr. Morley, the author of the Analytical Digest, who in his introduction to the Hindu law has cited the observations of the Sanscrit scholars of Europe, makes this concluding remark:—"Whatever may be the exact period at which the Mnevis Dharma Sástra was composed or collected, it is undoubtedly of very great antiquity, and is eminently worthy of the attention of the scholar, whether on account of its classical beauty; and proving as it does that, even at the remote epoch of its composition, the Hindus had attained to a high degree of civilization, or whether we regard it as held to be a divine revelation, and consequently the chief guide of moral and religious duties, by nearly a hundred millions of beings."—Morley’s Digest, Vol. I. Introd. p. cxvii.

The other Sanscrit scholars too of Europe do not and cannot deny that the Sanhitás of Manu is the most ancient or the first work of law.
The sage Vrihaspati, now supposed to preside over the planet Jupiter, says in his law tract, that ‘Manu held the first rank among legislators, because he had expressed in his code the whole sense of the Veda; that no code was approved, which contradicted Manu; that other Shástras and treatises on grammar or logic retained splendour so long only as Manu, who taught the way to just wealth, to virtue, and to final happiness, was not seen in competition with them.’ Vyása too, the son of Parásara before mentioned, has decided, that the Veda with its Angas or the six compositions deduced from it, the revealed system of medicine, the Parásas or sacred histories, and the code of Manu were four works of supreme authority, which ought never to be shaken by arguments merely human. Above all he is highly honored by name in the Veda itself where it is declared that what Manu pronounced was a medicine for the soul.

The following is a concise description of the works of several of the other sages.

Atri composed a remarkable law treatise in verse, which is extant.

Vishnu is the author of an excellent law treatise, which is for the most part in verse. Harita wrote a treatise in prose. Metrical abridgments of both these works are also extant.

Jágya vala kya appears, from the introduction to his own institutes, to have delivered his precepts to an audience of ancient philosophers assembled in the province of Mithilá. The institutes of Jágya vala kya are second in importance to Manu, and have been arranged in three books: viz. áchára, vyavyáhára, and práyasychitta kándas containing one thousand and twenty-three couplets.*

Usana (crude form Usanás) composed his institutes in verse, and there is an abridgment of the same.

* The age of this code cannot be fixed with any certainty, but it is of considerable antiquity, as indeed is proved by passages from it being found on inscriptions in every part of India, dated in the tenth and eleventh centuries after Christ. “To have been so widely diffused,” says Professor Wilson, “and to have attained a general character as an authority, a considerable time must have elapsed; and the work must date, therefore, long prior to those inscriptions.” In addition to this, passages from Jágya vala kya are found in the Panche-tantra, which will throw the date of the composition of his work at least as far back as the fifth century, and it is probable even that it may have originated at a much more remote period. It seems, however, that it is not earlier than the second century of the Christian era, since Professor Wilson supposes the name of a certain Ani, Ninaka, which name is found in Jágya vala kya’s institutes, originated about that time.—Morley’s introduction to the Hindo law, pp. 11, 12,
ANGIRÁ (crude form ANGIRAS) wrote a short treatise containing about seventy couplets.

YAMA or JAMA, composed a short tract containing a hundred couplets.

A'PASTamba was the author of a law tract in prose, which is extant as well as an abridgment of it in verse.

The metrical abridgment only of the institutes of Samvarta is found in this country.

KÁTYÁYANA is the author of a clear and full treatise on law and also wrote on grammar and other subjects.

An abridgment of the institutes, if not the code at large, of VRISHAS- PATI, is extant.

The treatise of PARÁSARA, which consists of the áchára and práya- chitta kándas, is extant.

VVÁSA is the reputed author of the Puránas: he is also the author of some works more immediately connected with the law.

SANKHA and LIKHITA are the joint authors of a work in prose, which has been abridged in verse: their separate tracts in verse are also extant.

DAKSHA composed a law treatise in verse.

GOUTAMA is the author of an elegant treatise, although texts are cited in the name of his father GOUTAMA, the son of UTATHYA.

SÁTÁTAPA is the author of a treatise on penance and expiation, of which an abridgment in verse is extant.

VASHISHTHA is the last of twenty legislators named by JAŚNYA- VALKYA: his elegant work in prose is intermixed with verse.

Besides the Sanhitás above mentioned, there is extant a part of NÁRADA's Sankitá; and some texts of the other sages, except Kuthuni, Buddha, Sádáyana, and a few more (whose Vachanas and names rarely occur in any compilation) are seen cited in the digests and commentaries.*

The works of the sages do not treat of every subject as the institutes of MANU do; and it is the opinion of Panditas that the entire work of none of the sages, with the exception of MANU, has come down to the present times.

* Professor Stenter enumerates forty-six legislators, who are the same as mentioned in the lists of JAŚNYAVALKYA, PARÁSARA, PADMA-PURDÁNA, and RAJA-KRISHNA, already given; and he considers them all to be extant, having himself met with quotations from all, except Agni, Kuthuni, Buddha, Shádáyana, and Soma.
There are glosses and commentaries on some of the principal institutes, which last, but for them, would have been very imperfectly understood, may some parts thereof would have been given up as unmeaning or obsolete. Various glosses on the institutes of \textit{Manu} are said to have been written by the \textit{munis} or old philosophers, whose treatises were esteemed as next to the institutes themselves. These, except that of Bháguri, do not appear to be extant. Among the modern commentaries, that by Medhálithi, son of Vira-swámi Bhatta, which having been partly lost has been completed by other hands at the court of Madana-pála, a prince of Digh, that by Gobinda-rája, and that by Dharani-dhara were in great repute until the appearance of Kulláka Bhatta’s commentary, which has preference over the other glosses, being considered by the \textit{Pandits} to be the shortest and yet the clearest and most useful. The glosses of \textit{Manu} denominated the \textit{Mádhaví} by Sháyanichárjya and the \textit{Nanda-rája-krit} by Nanda-rája appear to be known among the Marhattas, and the former to be of general authority especially in the Carnatic. The commentary denominated \textit{Manwar-tha-chandriká} appears also to be a work of celebrity. Another commentary on \textit{Manu} called the \textit{Káma-dhenu} appears to exist which is cited by \textit{Srí-dharáchárjya} in his \textit{Smriti-sóra}.

An excellent commentary on the institutes of \textit{Vishnu}, entitled the \textit{Voijyanta} was written by Nanda Pandita, who is also the author of a commentary on the institutes of \textit{Parásara}.

The copious gloss of \textit{Aparárka} of the royal house of Silara is supposed to be the most ancient commentary on \textit{Jágnyavalkya}, and accordingly earlier than the more celebrated commentary on the institutes of that sage,—the \textit{Mitákshará} of Viggáneshwara. A commentary on \textit{Jágnyavalkya} was also written by Deva-bodha, and the one written by \textit{Biswam-rápa} is often cited in the Digests.

---

*“At length appeared, (says Sir William Jones,) Kulláka Bhatta, a Bráhmana of Bengal, who, after a painful course of study and the collation of numerous manuscripts, produced a work, of which it may, perhaps, be said very truly, that it is the shortest yet the most luminous, the least ostentations yet the most learned, the deepest yet the most agreeable commentary ever composed on any author, ancient or modern, European or Asiatic.”*

† This work was used by Monsieur Deslongchamps in the preparation of his edition of the institutes of \textit{Manu}, and in his opinion it is in many instances more precise and clear than the gloss of Kulláka Bhatta.
The Dipa-kalikā by Shāla-pāṇi, which is likewise a commentary on Jāgnyavalkya, is in deserved repute with the Bengal school.*

The Mitāksharā of Vīgyāneshwara or Vīgyāna Jogi, a celebrated ascetic, although professedly a commentary on the institutes of Jāgnyavalkya, is in fact a general and excellent digest. By citing the other legislators and writers as authority for his explanation of Jāgnyavalkya’s text which he professes to illustrate, and expounding their texts in the progress of his work, and at the same time reconciling the seeming discrepancies, if any, between them, and the text of his author, Vīgyāneshwara has surpassed all those writers of commentaries whose works combine the utility of regular digests with their original character as commentaries.

Kāllāka Bhatta, the celebrated author of the commentary on the Māṇava-dharma-shástra, wrote also a gloss on the text of Jāma or yama, brother of the 7th Manu.

The text book of Goutama was commented upon by Hara-dattā-chārīya.†

The Varadā-rājya, by Varadā Rāja, is a general digest, but it may be placed among the commentaries, since it is principally framed on the institutes of Nārada. It is a work of authority in the Southern schools and especially in the Drāvīra country.

The Mādhaviya or Mādhavaya, though a commentary on the āchāra and prāyaśchitta kāndas of the institutes of Parāśara, is in fact an excellent digest and is of great authority in the southern part of India.‡

* Shāla-pāṇi was a native of Mithilā, he resided at Saharia in Bengal, and wrote also a treatise on penance and expiation, which is in great repute with both schools. Coleb. Dir. Prof. xviii.

† This commentator was a resident of Drāvīra, and is famous for his other compositions: his work, in which he occasionally quotes other Smritis, is called Mitāksharā, and must not be confounded with Vīgyāneshwara’s treatise of the same name.

‡ This work was composed by Vidyapraṇya Sāmī, the eminently learned minister of the founder of Vidyā-nagara, who, living in the fourteenth century, may be considered to have been, as it were, the lawgiver of the last Hindu dynasty. Of the first and third kāndas of this celebrated work, to which the author gave the name of his brother Mādhavachārīya, the basis is the text of Parāśara; but, as has been already explained, having, for the second, nothing of that Smriti to proceed upon, it became in fact, though not in name, a general digest of all the legal authorities prevalent at the time in the southern part of India. However this may detract in some degree from its value as being founded in truth upon no
There is a general and concise commentary and abridgment of the Smritis, which is entitled the Chaturvingshati smriti vyakhyā.

The doctrines of the legislators do not agree in all respects; nay, on certain points they differ even from those of Manu himself; but it is not optional with us to reject any of them, for Manu enjoins: "when there are two sacred texts apparently inconsistent, both are held to be law; for both are pronounced by the wise to be valid and reconcilable." Under such circumstances a reconciliation of the contradictions and discrepancies was the only remedy left. Hence arose the necessity of a complete digest, which, after harmonising the conflicting authorities, might lay down the rules to be followed in practice.

Several digests have for that purpose been composed by lawyers of different parts of India. And since the use of digests, the institutes of the sages are not regarded as themselves of final authority, which is to be sought in the conclusions and decisions of the authors of the several digests and the commentaries partaking of the nature of digests, with reference, however, to the schools to which they respectively belong*, (and which will be presently noticed.) Even the institutes of Manu, the foundation of the body of Hindu law, are in modern times looked upon as a work to be respected rather than to be implicitly followed.

The digests in general contain texts taken from the sanhilás, with occasionally comments thereupon and passages reconciling their apparent contradictions in fulfilment of the precept of the great lawgiver, Manu. They, moreover, contain frequent citations from other digests for the purpose of correcting or confuting their decisions or corroborating their own. Occasionally texts of the Sruti or Vedas and Puráñas are quoted as authority. The Sruti is respected as the highest authori-

* And opinions on points of law as current in a particular school are given by the pandits or lawyers either in the language of the author of a local digest (if suited for the purpose,) or in their own, which harmonises the expositions of one of the local digests implicitly followed as authority, and, in either case, texts of sages, if there be any, corroborative of those opinions and expositions.
ty, and the Purāṇas as next to the Smṛiti, which itself is next to the Sruti. In forming their opinions and giving decisions the authors of the digests often have had recourse to the following general maxims and texts: “A principle of law established in one instance should be extended to other cases also, provided there be no impediment.” “Between rules general and special, the special is to prevail.” “If there be a contradiction between a Sruti and a Smṛiti, the former is to be followed in preference to the latter; but if there be no such contradiction, the Smṛiti should be acted upon by the virtuous just as the Vedas” (Jābāli.) “Should there be a contradiction between a Smṛiti and a Purāṇa, the former must be followed without consideration of any matter” (Bhāṣyak Purāṇa.) “Wherever contradictions exist between Sruti, Smṛiti and Purāṇa, there the Sruti is preferable; but where a contradiction exists between a Smṛiti and a Purāṇa, there the Smṛiti is to be held in preference” (Vyāsa.) “If two texts (of Rishis) differ, reason (or that which it best supports) must in practice prevail” (Jagñāvālkyā.)

The various digests have not, however, treated of all parts of the Dharmaśāstra, nor have they arrived at the same conclusion. The variations in the doctrines of the digests have led to the formation of the different schools. The digests, with reference to the discrepancies existing among them, may be said to be of five classes, each of which has been adopted as authority in some particular part of India, and thus have been formed the five schools or divisions of Hindoo law. These schools are—the Gourīya (Bengal,) the Benares, the Mithiḍi (North Behar,) the Mahārāṣṭra (the Marhatta country,) and the Drāegra. The original Smṛitis are of course common to all of them, but they have each given the preference to the doctrines inculcated in particular digests; and the texts of the sages must be used in the same sense as propounded in the particular digests adopted in each of the schools. Of these five schools two may be said to be the principal,—the Benares and Bengal: the other three being in most respects assimilated to the Benares school.

The Mitāksharā of Vijnāneshwara is the chief guide of the Benares school. “The range of its authority,” says Mr. Colebrooke, “is far greater than that of any of the other digests; for it is received in all

* The Drāegra school is that of the whole of the southern portion of the Peninsula of India. It is termed by Sir William Macnaghten ‘the school of Dekhan,’ which is a corruption of the Sanscrit word ‘dakshina’ (south.)
the schools of Hindoo law from Benares to the southern extremity of the Peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.”

The law books used in the different provinces, except Bengal, agree in generally referring to the authority of the Mitákshará, in frequently appealing to its texts, and in rarely, and at the same time modestly, dissenting from its doctrines on particular questions. That dissent consists in inculcating certain doctrines not contained in, nor sanctioned by, the Mitákshará; and the adoption of some of these doctrines and the use of the books inculcating such doctrines distinguish each of the minor schools from that of Benares. The other works which concurrently with the Mitákshará are preferentially respected in the province of Benares are the Víra-mitrodaya by Mitra Míra, the Parasvaráma-mádhava, the Vyavahára-mádhava, the commentaries on the Mitákshará by Víreśhvara Bhatta and Bálám Bhatta, the Nirṣayásindhu, and the Viváda-tándava and other works of Kamálékara.

The leading authorities of Mithilá are the Viváda-ratnákara*, and Viváda-chintámanitä. The Viváda-chándra by Lakshmi or Lakshimá Deví is likewise much respected in that school†. The works which concurrently with the above are of great weight in Mithilá are the treatise on inheritance by Srikaríchárya, the Madana-párijátaś, the Srmíti-sóra or at full length Srúityartha-sóra by Srí-dharáchárya, the Srmíti-

---

* Viváda-ratnákara was compiled under the superintendence of Chandeshwara, the minister of Hara Sinha Deva, king of Mithilá. Chandeshwara himself is also the reputed author of some law tracts. The Vyavahára-ratnákara, compiled under the superintendence of the same minister, is also of great authority in Mithilá.

† This work was composed by Bíchaspati Míra, who was also the author of several other works, namely, the Vyavahára-chintámanitä, &c. commonly cited by the name of Míra, these also are of great authority in Mithilá. Mr. Coleridge says:—‘No more than ten or twelve generations have passed since he flourished at Semou in Tírhoot.’—Colob. Dig. pref. p. xv.

‡ This learned lady set the name of her nephew Míru Míra to all her compositions on law and philosophy, and took the titles of her works from the then reigning prince Chándra Sinha, grandson of Hara Sinha Deva.—Ibid. pref. pp. 15 & 18.

§ This treaty was composed by Víreśhvara Bhatta, and is named in honor of Madana-pála, a prince of the Jat race, who reigned at Kásthá-nagará or Dighá, and who is apparently the same who gives title to the Madana-víreada dated in the 15th century of the Sambhir Era (Colob. Dig. pref. xvii. § Dá. Sá. pref. xli.) Sir W. Macnaghten calls the author ’Madana-pálaháyá.’ This work chiefly treats of achára and vyavahára kánda and also prevails in the Maratha country.
sára or Smriti-samuchya by Harináthopádhyáya, and the Dwoita-parishista by Kesava Míra. In the Marhatta school (or in the province of Bombay) preference is given to the Vyavahára-mayúka of Níla-kautha,⁴ the Nírnaya-sindhu, the Hemádri, the Vyavahára-koustubha and Parasu-ráma-mádhava. The works of paramount authority in the Drávra school (that is in the territories dependant on the Government of Madras) are the Mádhavíya, the Smriti-chandriká and the Saraswati-vilása.⁴

These are the law tracts specially followed by the last three schools on account of their adopting certain doctrines that are inculcated by those books but have no place in the Mitáksharó, which in all other points is respected as the main authority of all those schools of law. In Urisa too, which is now connected with the province of Bengal, the Mitáksharó is of paramount authority, together with which are received there the works of shambhokara Bójpeí and Udaya-kara Bójpeí. Bengal Proper has alone taken for its chief guide in matters of in-

---

* This is the sixth of the twelve treatises by the same author all bearing the same title Mayúka, and the whole is designated collectively the 'Bhagvat-bháskara.' The other eleven treatises of this author treat of religious duties, rules of conduct, expiation, &c.

† By Kamalákara Bhatta Káshikara. It was written 248 years ago. It treats principally of śhára and Práyáschitta, touching incidentally only on questions of a legal nature. This work is of considerable authority at Benares, as well as amongst the Marhattas.

‡ By Hemádri Bhatta Káshikara. This is a work of antiquity: it contains twelve divisions and treats of all subjects, and is respected in many of the schools. Vopa-deva, author of the celebrated Grammar 'Májáha-vadha,' is also said to be the author of this great work (Hemádri.)

§ By Devaśandha Bhatta. “This excellent treatise on judicature is of great and paramount authority, as I am informed, in the countries occupied by the Hindu nations of Drávra, Telanga, and Carnata, inhabiting the greatest part of the Peninsula or Dikha,” Note by Colebrooke to his preface to the Díya-bhadga, p. iv.

¶ This is a general digest attributed to Pratápa-rudra Deva Maha'sája, one of the princes of the Kákuya family, who established themselves to the north of the Críshna where they fixed their seat of government, which, extending itself by conquest, became the second empire to the southward. The second, comprehends, as it does, the territories now belonging to Hyderabad, the Northern Circars, a considerable portion of the Carnatic, and, generally speaking, the whole of the countries, of which the Telanga is at present the spoken language. This work, probably composed by his direction, became the standard law book of his dominions.—See Str. H. L. prof. pp. xvi, xvii.
heritance* of the Dāya-bhāga of Himāta-vāhana, which is on almost every disputed point opposite to the Mitākshara: its authority is supreme. This celebrated treatise forms a part of his digest termed Dharma-rita. Himāta-vāhana, therefore, may be styled the founder of the Bengal school.† The arguments by which he establishes his own opinions are treated with great ability; quotations from his work, or references to it, have been made by all the authors of the law tracts current in Bengal. The other works of great authority in Bengal are the Dāya-tattva, the Su-bodhinī, which is a commentary on the Dāya-bhāga by Śrī-krishṇa Tarkālakāra, and the Dāya-krama-saṅgraha.§

The Dāya-tattva is that portion of Raghunandana’s Smrī-tattva which treats of inheritance. It is a short and concise composition of

* It is indeed in this branch of the law that one would find a great difference in doctrine.
† Himāta-vāhana is said to have reigned on the throne of Śaṅkī-vāhana. He is probably the same with śrīkṛṣṇa-ketu, a prince of the race of Śilāra who reigned at Tagara; and he is mentioned in an ancient and authentic inscription found at Salset. (Vide Asiatic Researches, vol. i. pp. 357 § 361.)

"It was an obvious conjecture that the name of this prince had been fixed to a treatise of law composed perhaps under his patronage and by his directions. That however is not the opinion of the learned in Bengal, who are more inclined to suppose, that the author really bore the name which is affixed to his work, and was a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the Hindu sovereigns of Bengal. No evidence, however, has been adduced in support of this opinion; and the period when this author flourished is therefore entirely uncertain."—Coleb. Dā. bhā. pref. pp. xi, xii.

‡ Sir William Macnaghten adds to the above number the compilations termed Vpa-rakṣādhyayana, the Vindādhyayana, or Vindādhyayana-sūta and the Vindā-bhaṅgadhyayana. The first of these has not been translated nor does it appear to be used by the Pāṇḍita. The second was disapproved of by Sir William Jones, and is seldom made use of by the Pāṇḍita, the translation of it too was considered by that learned Judge as having no authority. (See his letter hereafter inserted.) The third, namely, the vīrāda-bhaṅgadhyayana, the translation whereof is known by the name of ' Colebrooke's Digest,' is a general digest, which cites texts of most of the sages and passages from the works of all the schools, and comments thereupon. It is therefore a work not only for the Bengal school but also for the other schools, and has been actually used as such by Sir Thomas Strange, and Mr. Colebrooks, and also by the Pāṇḍita of the different schools, as will be found on reference to the two volumes of Strange's Elements of Hindu law, and the second volume of Macnaghten's Principles of Hindu law.

§ The Smrī-tattva of Raghunandana, who is commonly called Smārtu Bhattāchārjya, is the greatest authority as regards the ṭāḍāra and prāṇaṇcita hāndas of the Dharma-
the law, in which Jimáta-váhana's doctrines are in general strictly followed, but commonly delivered in his own words, or in brief extracts from Jimáta-váhana's text. On a few points, however, Raghu-nandana differs from Jimáta-váhana, and in some instances supplies that author's deficiencies.

The Dáya-krama-sangraha is an original treatise by Srí-krisna Tarálandakóra, and contains a good compendium of the law of inheritance according to Jimáta-váhana's text, as expounded in his commentary.

The Dáya-rahasya or Smriti-ratnávali of Rám-nátha Vidyáváchaspati obtains a considerable degree of authority in some of the districts of Bengal; it differs, however, in some material points from both Jimáta-váhana and Raghu-nandana, and thus tends much to disturb the certainty of the law on some important questions of frequent occurrence.

The other treatises on inheritance according to the doctrines received in Bengal, are the Dáya-nirñaya by Srí-kara Bhattáachárya and a few more, which are little else than epitomes of the works of Raghu-nandana and Jimáta-váhana.

There are several commentaries on the Dáya-bhága. The earliest of these is that of Srí-náth A chórija Chárá-mani which, though frequently cited by Srí-krisna to correct or confute opinions therein expressed, must be acknowledged as, in general, an excellent exposition of the text, and was a great authority before the appearance of Srí-krisna's commentary: even now it is respected as authority on points not contradicted by Srí-krisna.

Skástra in the province of Bengal, and is a complete digest of those two kándas. It comprises twenty-seven tattvas (books) twenty-four of which respect the dárcha and práyácabháta kándas, and three books treat of three of the eighteen branches of the vyavakara kánda: viz. the Dáya-tattva which is on inheritance, the vyavahára-tattva which is on jurisprudence, and the Dáya-tattva which treats of ordeals. Sir William Jones says: "his digest approaches nearly in merit and in method to the digest of Justinian." Raghu-nandana flourished in the 16th century, for he was pupil of Vásu-deva Sárva-bhouma, and studied at the same time with three other disciples of the same preceptor who likewise have acquired great celebrity: viz. Shiromani, Krisna-xanda and Choltunga; the latter is the well known founder of the religious order and sect of the vráhamsars, and the date of his birth being held memorable by his followers, it is as ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date of his works to have been 1411 of the Skaka Era answering to Y. C. 1489; consequently Raghu-nandana being his contemporary must have flourished at the beginning of the 16th century. Dá. bhá, pref. p. xii.
The next in order of time is the gloss of Achyuta Chakra-baroti (author likewise of a commentary on the Shraddha-viveka.) It cites frequently the gloss of Chārā-manī, and is itself with that of Chārā-manī quoted by Maheshwara. This work is upon the whole an able interpretation of the text of Jīmūta-vāhana. The commentary by Maheshwara which is posterior to those of Chārā-manī and Achyuta is probably anterior to Śrī-krishna's commentary, or at least of nearly the same time; for they appear to have been almost contemporary, the former seemingly a little elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense, but neither of them affords any indication of having seen the other's work. The gloss by Maheshwara is for the greater part an able interpretation of the text of Jīmūta-vāhana. “The commentary of Śrī-krishna Turālankāra (says Mr. Colebrooke, and very justly too,) is the most celebrated of the glosses of the text of the Dāya-bhāga. It is the work of a very acute logician, who interprets his author and reasons on his arguments with great accuracy and precision, and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout Bengal; and it has almost banished from them the other expositions of the Dāya-bhāga; being ranked, in general estimation, next after the treatise of Jīmūta-vāhana and of Rāghu-nandana.”

Of the remaining commentaries one bears the name of Rāghu-nandana. It is indeed a poor production and is strongly suspected of bearing a borrowed name; or if it be at all the work of the celebrated author of the Smriti-tattvam, it must be the earliest production of his pen. The commentary by Rām-bhadra Nyāya-lankāra, is not generally in use; and the commentary written by Krishna-kūnta Sarmā of Nudea is neither complete nor in use. All these commentaries on the Dāya-bhāga have of late been printed with the text by Baboo Prosunno Coomar Tagore.

Rāma-nātha Vidyā-vāchaspati, the author of Dāya-rahasya, has also written a commentary on the Dāya-bhāga.

* The great grandsons of both these writers were living in 1806: and the grandson (daughter's son) of Śrī-krishna was alive in 1790. Both consequently must have lived in the first part of the last century.—Coleb. Dā. bhā. pref. p. vii.
Kāshi-rāma has written a useful commentary on the Dāya-tattva of Ratnagupta, which nearly agrees with the views taken by Śrī-krishna in his interpretation of the Dāya-bhāgā.

These are the five classes of law tracts, which are severally respected by the five schools or divisions.* It must not, however, be inferred that each of these classes of law tracts is respected solely by a particular school, and not at all by the other schools; the fact is, that each is of paramount or leading authority with a particular school, and at the same time is on general and uncontradicted points respected as authority in the other schools, though of course in subordination to that which is preferentially used by them severally. A class of law tracts, which is of paramount authority with one school, may also be regarded as of unquestionable authority in another school on points regarding which no rules are prescribed in the books preferentially used in that school.†

* Mr. Morley, however, in his recapitulation sub-divides the Dāvīra division into three, namely Dāvīra, Carṇātaka, and Andhra, and mentions the books preferentially used in each of the schools of Hindu law. They are as follows:


III. Benares School:—Mīhīrāhārā, Viśdā-nirūdaya, Madhavīya, Viśdā-tāndava and Nīrṇaya-sindhu.

IV. Mahārāṣṭra School:—Mayānīka, Mīhīrāhārā, Nīrṇaya-sindhu, Hemādī, Smṛiti-koustabha, and Madhavīya.

V. Dāvīra School:—

Dāvīra Division:—Mīhīrāhārā, Madhavīya, Saravati-vīlāsa and Varad-rāja.
Kārnātaka Division:—Madhavīya, Mīhīrāhārā, Saravati-vīlāsa.
Andhra Division:—Mīhīrāhārā Madhavīya, Smṛiti-chandrika, and Saravati-vīlāsa.

† Thus in Strange's work on Hindu law, which is principally designed for the Marhatta and Dāvīra schools, works of paramount authority in Bengal have been cited on the general points and also on points not touched upon in the law tracts chiefly used in those schools. In the first of the above two cases the Bengal authorities are regarded as secondary to, or corroborative of, the authorities of those schools, while in the second case the authorities of the Bengal school must be regarded as also unquestionable authorities in the said schools by reason of having supplied the deficiency in the law tracts adopted by them. It will also be found from the second volume of Sir William Macnaghten's work
Of the treatises on adoption, the Dattaka-mimánṣé of Nanda Pandita, the author of the Vaijñavánti and the Pratitákshará, and the Dattaka-chandriká† by Devánanda Bhattá, the author of Smriti-chandriká, (ante, p. xiv,) are the most esteemed: they are almost equally respected all over India, the law of adoption not exhibiting much conflict of doctrines between the several schools, although some difference of opinion may be observed amongst the individual writers. It must be remarked, however, as an important distinction, that where they differ the doctrine of the Dattaka-chandriká is adhered to in Bengal and by the Southern jurists, while the Dattaka-mimánṣé is held to be an infallible guide in the provinces of Mithilá and Benares. In addition to these two treatises, there are the Dattaka-mimánṣé by Vidyāranyá Svámiti, the Datta-chandriká by Gánadeva Bójpir, the Datta-dópaka by Vyāsóčakíjya, the Dattaka-kñustubha by Nógojí Bhattá, the Dattaka-bhúshana by Krishna Míra, the Dattaka-tilaka by Bhāva-deva Bhattá, and the Dattaka-siddhánta-munjaré by Rámakrishñá, which are general digests of the law of adoption, but they appear to be rarely used or cited by the lawyers. There is another treatise on adoption called the Dattaka-nirnaya, which is a compilation of a celebrated Pandit of the name of Srí-nátha Bhattá. This work was translated by Mr. Blaquiere, but the translation has not been published.‡

---

† The Dattaka-chandriká is a concise treatise on adoption and is supposed to be the basis of Nanda Pandita’s more elaborate work. Many of the Pandits of Bengal attribute this work to the late Raghu-mani Vidyāranyá, spiritual adviser of the Rájá of Nudde and a distinguished Pandit who flourished in the latter part of Jagan-nátha’s life, and is said to have assisted Mr. Colebrooks in the preparation of his translation of the Dáyá-bhagá and Mridukárá. One of the grounds of such attribution is, that by putting together consecutively the first letter of the first and third lines and the last letter of the second and fourth lines of the last verse of the book the name ‘Raghu-mani’ is formed.

‡ See preface to the Considerations on Hindu Law, p. xiii.
An excellent commentary on the Dattaka-mimāṃsā and Dattaka-chandrikā has been recently written and published by Bharat-chandra Shiromani, a celebrated lawyer, and at present the professor of Hindu law in the Government Sanscrit College.

Besides the above, there exist several other digests and commentaries. These are the Aĉhārīya-chandrikā by Śrī-nāthāĉhārīya, son of Śrī-karāĉhārīya, both celebrated lawyers of the Mithilā school;—the Vyavahāra-kalā of Bhava-deva Bhatta, also called Bala-balabhi-bhu-janga, author of the rituals much consulted in Bengal;—the Brāhmansarvasva, Nyāya-sarvasva, Pandita-sarvasva, and the other treatises by Halāyudha,* which are chiefly cited in the Bengal digests;—the subline works of Udoyanāĉhārīya, the reviver of the rational system of philosophy;—the Calpa-taru by Lakshmi-dhara, who also composed a treatise on the administration of justice by command of Govinda-chandra, a king of Kāshi sprung from the Vāstava race of Kōyasathas;—the Govindārṇava, composed under the superintendence of the same prince by Nara Sinha, who was the son of Rām-chandra, the grammarian and philosopher;—the Parasu-rāma-pratōpa, a general digest composed by order of Sāhāji Pratōpa, Rājā of the Eastern Telinga country, about five hundred years ago. The Vyavahāra Shalākāra by Nāgoji Bhatta; the Madana-ratna by Madana Sinha, an ancient work of notoriety treating of the āchāra, vyavahāra, and prāyashchitta;—the āchāraka a work principally on āchāra and vyavahāra by Shankara Bhatta Kāshi-kara;—the Dyota, a general digest written more than a century ago by Goga Bhatta Kāshi-kara;—the Dinakara-udyota, a work on āchāra and vyavahāra by Vishva-rūpa Rāmakara Goga Bhatta Kāshi-kara;—and the Prithibhi-chandroda, which also is a general digest. Most of these works are not now in use, but their texts are cited in many of the current digests and commentaries. The work of Jitendriya is cited in the Mitākṣharā, Dōya-bhōga, and other books. And the works of Goi-chandra, Graheśhvara, Dhāreshwara,† Bala-rūpa, Hari-hara,

* This great Pandit was the spiritual guide of Lakshmāna Sena, a renowned monarch, who gave his name to an era of which upwards of seven hundred years have expired.
Halāyudha was a descendant in the fifteenth degree of Bhatta Nārāyana, author of the Vaiśeṣikā, (a celebrated drama), and one of the five vedantists who were brought from Kusam by Rājā Aśūra, and whose descendants are almost all the Bāishi and Bārentra brāhmīnas of Bengal.
† Dhāreshwara is said to be the same as Rāja Bhoja. Vide Coleb. Dig. prof. p. xi.
Murāri Misra, and many others are occasionally alluded to in the Vivāda-bhangārava and some other digests.

Since the establishment of the British empire in India three digests have been composed in Sanscrit. The first of these is the Vivāda-bhangārava-setu* compiled at the request of Mr. Warren Hastings. This work was proposed as early as the 18th of March 1773, at the opening of the Court of Sudder Dewanny Adawlut in Bengal. In the following year a translation of the work was made by Mr. Halmshed and published under the title of “A code of Gentu Laws.” This work, however, was disapproved of, and its translation was condemned by Sir William Jones for reasons† set forth in his letter to the Chief Government of India, in which he strongly recommended the enforcement of the Hindu law and the compilation of a better code. The sentiments expressed in that paper are truly worthy of him. “Nothing (he says) could be more obviously just than to determine private contests according to those laws, which the parties themselves had ever considered as the rules of their conduct and engagements in civil life; nor could any thing be wiser than, by a legislative act, to assure the Hindus and

* This work was compiled by several Pandits, of whom Jagan-nātha, author of the Digest translated by Mr. Colebrooke, was one.

† “It (says the learned judge alluding to the work in question) by no means obviates the difficulties before stated, nor supersedes the necessity or the expedience at least of a more ample repository of Hindu laws, specially on the twelve different contracts to which Ulpian has given specific names, and on all the others, which, though not specifically named, are reducible to four general heads. The last mentioned work is entitled the Vivāda-bhangārava-setu, and consists, like the Roman digest, of authentic texts with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes taken from commentaries of high authority. It is as far as it goes a very excellent work; but though it appear extremely diffuse on subjects rather curious than useful, and though the chapter on inheritance be copious and exact, yet another important branch of jurisprudence, the law of contracts, is very succinctly and superficially discussed, and bears an inconsiderable proportion to the rest of the work. But whatever be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages which we find in it; properly speaking, indeed, we cannot call it a translation; for though Mr. Halmshed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose injudicious epitome of the original Sanscrit, in which abstract many essential passages are omitted.” Mr. Colebrooke, by quoting the above remark in the preface to the Digest, and not making any observation upon it either in that book or in any of his works or opinions, seems to have acquiesced in the judgment pronounced upon it by Sir William Jones.
Mussulman subjects of Great Britain, that the private laws, which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance.* So far the principle of decision between the native parties in a cause appears perfectly clear; but the difficulty lies (as in most other cases) in the application of the principle to practice; for the Hindu and Mussulman laws are locked up for the most part in two very difficult languages, Sanscrit and Arabic, which few Europeans will ever learn, because neither of them leads to any advantage in worldly pursuits; and if we give judgment only from the opinions of the native lawyers and scholars, we can never be sure that we have not been deceived by them. It would be absurd and unjust to pass an indiscriminate censure on a considerable body of men; but my experience justifies me in declaring, that I could not with an easy conscience concur in a decision merely on a written opinion of native lawyers, in any cause in which they would have the remotest interest in misleading the court: nor, how vigilant soever we might be, would

* Again, at the conclusion of his preface to Mau, that eminent judge remarks: "Whatever opinion in short may be formed of Mau and his laws, in a country happily enlightened by sound philosophy and the only true revelation, it must be remembered that those laws are actually revered as the word of the most High by nations of great importance to the political and commercial interests of Europe, and particularly by many millions of Hindu subjects, whose well directed industry would add largely to the wealth of Britain, and who ask no more in return than protection for their persons and places of abode, justice in their temporal concerns, indulgence to the prejudices of their old religion, and the benefits of those laws, which they have been taught to believe sacred, and which alone they can possibly comprehend."

Sir Francis Macnaghten too remarks: "The right of Hindus to have their contests decided by their own laws, has been established by the legislature of Great Britain; and, I most cordially concur in the sentiments which have been expressed by Sir William Jones upon this subject." "As to the Hindus, I have not a predilection for the tenets of any of their schools, or for the doctrines of any of their scholiasts, in particular. Such as their law is, they have a right to an administration of it, among the parties themselves. To deprive them of this right against their will, or without their desire, would be rigorous in a civil, and intolerant in a religious point of view; for their laws and their religion are so blended together that we cannot disturb the one without doing violence to the other. Their own is the only law to be administered to them." "Give them not any laws but their own; yet under a pretext of dealing those out, let us not subject the people to wrong." Cons. H. L., pref. pp. v, vi.
it be very difficult for them to mislead us, for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book, from which it was selected, it might be differently explained, and introduced only for the purpose of being exploded. The obvious remedy for this evil had occurred to me before I left England, where I had communicated my sentiments to some friends in Parliament, and on the bench in Westminster Hall, of whose discernment I had the highest opinion; and those sentiments I propose to unfold in this letter with as much brevity as the magnitude of the subject will admit. If we had a complete digest of Hindu and Mahomedan laws, after the model of Justinian's inestimable Pandects, compiled by the most learned of the native lawyers with an accurate verbal translation of it into English; and if copies of the work were reposed in the proper offices of the Sudder Dewanny Adawlut and the Supreme Court, that they might occasionally be consulted as a standard of justice, we should rarely be at a loss for principles at least and rules of law applicable to the cases before us, and should never perhaps be led astray by the Pandits or Mouwads, who would hardly venture to impose on us when their imposition might be so easily detected. It would not be unworthy of a British Government to give the natives of these Indian provinces a permanent security for the due administration of justice among them, similar to that which Justinian gave to his Greek and Roman subjects; but our compilation would require far less labour and might be completed with far greater exactness in as short a time; since it would be confined to the laws of contracts and inheritances, which are of the most extensive use in private life, and to which the legislature has limited the decisions of the Supreme Court in causes between native parties." The letter from which this extract is taken, is dated 19th of March 1788.

On the same date, the then Governor General, Marquis Cornwallis, with the concurrence of the Members of Council, accepted the offer in terms honorable to the proposer and expressive of the most liberal sentiments. "The object of your proposition (they say) being to promote due administration of justice, it becomes interesting to humanity; and it is deserving of our peculiar attention, as being intended to increase and secure the happiness of the numerous subjects of the company's provinces." And the result of this proposition, so gladly
accepted by the Governor General in Council, was the composition of the \textit{Viváda-sárárvana}, and the \textit{Viváda-bhangárvana} : the former was written by \textit{Sarvorn Trivedi}, a lawyer of Mithilá, and the latter by \textit{Jagan-nátha Tarka-panchánana}, and both by the direction of Sir William Jones, who himself had undertaken a translation of the latter work together with an introductory discourse, for which he had prepared ample materials,* when the hand of death arrested his labours. Although it must be a matter of regret that the public has lost, by his premature death, a translation from his pen of a digest compiled under his direction, yet it must be acknowledged that the scholar selected by Sir John Shore, the succeeding Governor General, for completing† a translation of this digest was one who seems to have devoted much more time and attention to the study of our literature and law, and than whom no one has as yet been able to make a more faithful and complete translation of a law tract in Sanscrit, or to give a better exposition of our law. The translation of the \textit{Viváda-bhangárvana} or \textit{Jagan-nátha’s} Digest is commonly known as ‘Colebrooke’s Digest.’ This digest treats in full of the topics of contracts and inheritance as required by Sir William Jones. The author of the work was one of the greatest \textit{Pandits} and also one of the most ingenious logicians of the age. Instead of reconciling contradictions or making anomalies consistent, he has in many instances attempted to display his proficiency in logic and promptitude in subtle ingenuity, and has thus rendered the work an unsafe guide for a reader not already well versed in the law. Such reader will often find in it several discordant doctrines on one and the same point, and will be at a loss to know which to follow; and if he follow whatever doctrine he finds at the first sight, without knowing what doctrine is recorded on the same point at another page, he will perhaps do wrong, for there may be in another place of the same book another doctrine, perhaps the just one, and the former may have been founded only on subtle ingenuity. He will moreover see that in one place doubts are ingeniously thrown upon established doctrines and principles laid down by

---

* See his last anniversary discourse as President of the Asiatic Society, vol. iv. p. 176.
† Because the version of many texts cited in the work come from the pen of Sir William Jones, most of the laws quoted from \textit{Manu} being found in his translation of the \textit{Mánavadharmaśāstra}, and other texts having been already translated by him when pursuing the preceding digest, the \textit{Vivádárvana-setu}.—\textit{Vide Coleb}, Dig. pref. p. xviii.
unquestionable authorities, and in another he will find a corroboration of the same doctrines and principles. He will very often find no decision on a point, but only the discordant opinions of several authors of several schools. Under such circumstances he only who knows the established doctrines of the different schools can safely make use of the work. It is for the above and other reasons that unfavourable opinions have been expressed by the European scholars who have written on the Hindu law.*

* The opinion of Mr. Henry Colebrooke is as follows: "In the preface to the translation of the Digest I hinted an opinion unfavourable to the arrangement of it as it has been, executed by the native compiler. I have been confirmed in that opinion of the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence; especially to the English reader, for whose use, through the medium of translation, the work was particularly intended."—Preface to the Dāya-bidga, pp. ii, iii.

"It consists," says Sir Thomas Strange, "like the Roman Digest, of texts, collected from the works of authority extant in the Sanscrit language only, having the names of their several authors prefixed, together with an ample commentary by the compiler founded for the most part upon the former ones. That its arrangement was not, on its first appearance, satisfactory to the learned, and that the commentary abounds with frivolous disquisitions, as well as with the discordant opinions of different schools, not always sufficiently distinguished, rests upon the best authority, that of the learned translator; by whom its utility, for the purpose for which it was planned, is well nigh disclaimed. It is long, therefore, since it was characterised, not unhappily, as 'the best law book for counsel and the worst for a judge.' But in whatever degree, Jagan-nātha's Digest may have fallen in estimation, as a book to be used with advantage in our courts, and especially in those to the Southward, it remains a mine of juridical learning, throwing light upon every question on which it treats, whatever attention it may require in extracting it."—Str. H. L. Vol. i. pp. xvii—xix.

The author of the Considerations on the Hindu Law remarks:—"The plan of Sir William Jones may have been excellent, but the execution of it fell to the share of Jagan-nātha. He has given us the contents of all books indiscriminately. That he should have reconciled contradictions or made anomalies consistent, was not to be expected; but we are often the worse for his sophistry, and seldom the better for his reasoning. His incessant attempts to display proficence in logic and promptitude in subtlety, he might have spared without regret to his readers."—Conu. H. L. p. viii.

The author of the Summary of the Laws and Customs of the Hindus remarks:—"The Digest of Jagan-nātha translated by Mr. Colebrooke, although other subjects are occasionally adverted to, is nominally confined to the law of contracts and successions; and the
The *Vivāda-bhāgnāra*, citing, and commenting on, the texts of the works adopted in the several schools, is occasionally used as an authority by the lawyers of the other schools.*

frequent occurrence of jarring texts and obscure commentaries forms a great objection to it as a work of particular reference,”—*Ibid*, pref. p. v.

I concur, however, with Mr. Morley in the opinion that—“Notwithstanding the unfavourable opinions of the *Vivāda-bhāgnāra*, pronounced by its learned translator and others, there is no doubt but that it contains an immense mass of most valuable information, more especially on the law of contracts, and will be found eminently useful by those who will take the trouble of familiarising themselves with the author’s style and method of arrangement.” The accuracy of the learned translator’s remarks,—that for the reasons noticed by him, the work is of little utility (even) to persons conversant with the law, may be questioned. Persons conversant with the *Hindu* laws, as current in the different schools seeing an opinion with the name of its author may recollect or discover to what school he belongs; nor can it be difficult for them to know whether that opinion prevails in any school or is become obsolete. At any rate, they will find in the book almost all the important texts of almost all the ancient and modern works, with comments or expositions so numerous, curious, and interesting that no work in existence can impart half the information or knowledge which *Jagān-nāṭaka’s* Digest does. And possessed of this immense mass of opinions and information they can easily select those justly referrible to each of the schools: those conversant with the doctrines of the *Hindu* laws as current in the different schools cannot therefore fail to derive very great benefit from this work. Sir Thomas Strange and Sir William Macnaghten, whose works abound with references to quotations from the Digest, and many of whose principles are founded thereupon, are striking proofs of the usefulness of the work in this respect. The learned Translator too has written several of his remarks and opinions on the authority of that Digest. It is only difficult, as already remarked, for a person not conversant with the law, to derive benefit from it; and in fact to them it would be an unsafe guide.

* Mr. Colebrooke, however, in his letter to Sir Thomas Strange says:—“We have not here the same veneration for him when he speaks in his own name, or steps beyond the strict limits of a compiler’s duty; and as his doctrines, which are commonly taken from the Bengal school, or sometimes originate with himself, differ very frequently from the authorities which heretofore prevailed in the South of India. I am sorry that the Southern *Pandit* should have been thus furnished with means of adopting, in their answers, whatever doctrine may happen to be best accommodated to the bias they may have contracted; and I should regret that *Jagān-nāṭaka’s* authority should supersede that of the much abler authors of the *Mitākṣarā*, *Svētāṭīra* and *Mādhavīya*.” With due deference to that eminent scholar, it may be remarked that if the Southern *Pandit* used an opinion originating with *Jagān-nāṭaka* himself and not founded upon, or consistent with, an unquestionable authority, notwithstanding the *Mitākṣarā* and the other authorities expressed a different doctrine on the same point, then their opinion would indeed be objectionable; but if they cited a passage from *Jagān-nāṭaka’s* Digest because they did not find a law on the same point in the books preferably used in their schools, or because they found in *Jagān-nāṭaka’s* Digest an exposition better worded, and not contradicted by the local authorities, the learned gentleman ought not to have been sorry for it; insomuch as he himself has done the same in many of his remarks, on the opinions of the Southern *Pandit*, publish
Some other law tracts also have been translated into English; the most important of which are the Dēya-bhāga of Jīmāla-vāhana and the Mitāksharā of Vīgyāneshvara, the standard authorities of Hindu law of inheritance in the schools of Bengal and Benares respectively. They were translated by Mr. Henry Colebrooke with accuracy and fidelity. The learned translator having accompanied them with elucidatory annotations and glosses drawn from their commentaries and numerous other sources, to which his peculiar opportunities and immense erudition gave him ready access, has rendered those translations of very great utility; every page bears testimony to his diligence in collecting the materials, to his judgment in their selection, and to his learning in their interpretation. A considerable knowledge is sure to be derived from the study of these two works in which the entire doctrine of the two schools, with the reasons and arguments by which each is supported, may be seen at one view in a condensed form. Mr. Oriaune has also translated the chapter on inheritance from the Mitāksharā. Mr. Borradaile, a Judge of the Sudder Dewanny Adawlut of Bombay, and the author of the valuable Reports, has published a translation of the Vyavahāra-mayākha, to which he has affixed annotations referring the passages of other works on Hindu law, and rendering his version of peculiar utility to the student of the law of that side of India. A translation of the Dēya-krama-saṅgraha has been published by Mr. Wynch, who has judiciously adopted the version of the texts of the legislators and sages of antiquity cited therein from ed in the second volume of Strange’s work on the Hindu law Sir William Macnaughton too, though he in one place considers the Vīṣṇu-bhaṅgārāja as a Bengal authority, has founded many of his general principles upon the texts contained in the said Digest. Open also the second volume of his work on Hindu Law, and it will be found that many vyavasthās relative to cases of the other provinces have been founded by the Pandits on the authority of Jaya-naṭhā’s Digest, and those vyavasthās of theirs have been approved of and published by the learned gentleman himself as correct and accurate. Besides, where Jaya-naṭhā, citing the authorities of one school, draws a conclusion not inconsistent with its doctrines, or where he gives an exposition as being the doctrine of a certain school, and that exposition is not contradicted by the authorities thereof, or where his work contains an exposition not to be found in, or not prohibited by, any of the law tracts current in that school, there is no reason why that part of his work should be used by lawyers as an authority in that school. Had the case been otherwise, Sir Thomas Strange, whose work on Hindu law is chiefly intended for the Southern schools of India, would not have cited as authorities Jaya-naṭhā and other authors of Bengal in almost every page of his work; and Sir W. Macnaughton too would not have founded his chapter on contracts which is for all the schools, almost solely upon Jaya-naṭhā’s Digest.
the works of Sir William Jones and Mr. Henry Colebrooke. The institutes of Manu have been translated by Sir William Jones and Sir Graves Haughton into English, and by Monsieur Loiseleur Deslongchamps into French. The version by Jones has been generally considered as the master-piece of that learned and elegant writer: those by Haughton and Deslongchamps vary from it but slightly and nowhere importantly. There is another translation by one or two natives of the first three books of Manu, published in pamphlets, in which the Sanscrit text is given in the Deva-nagri character, a literal translation in Bengalee, and Sir William Jones' translation, with a revised translation in English. The Dattaka-mimonsa and Dattaka-chandrikā have been translated by Mr. Sutherland, with useful notes after the manner of his illustrious uncle, Mr. Colebrooke. His version of the two standard works on adoption and the synopsis thereof, which he has appended to his translation, are eminently useful. A French translation of the Dattaka-chandrikā by Mr. Orianne, has also been published.

A translation of the Vyavahāra kānda of Jānyavalkya's institutes by Dr. Roer and F. Montriou Esq., Barrister, has just appeared. This work is entitled "Hindu Law and Judicature," and contains many explanatory and useful notes.

Besides the above mentioned translations we have some original works on Hindu law written in English. The chief of these are the "Considerations on Hindu Law." "Elements of Hindu Law," and the "Principles and Precedents of Hindu Law."

Sir Francis Macnaghten was the author of the Considerations on Hindu Law, which consists of enunciation of principles, seldom founded upon the authority of the law books, but generally collected from the then decided cases, such as ought, in his judgment to be adopted, and such as ought, if adopted, to continue immutable. Those cases, however, were decided for the most part according to the opinions of Pandits, who are spoken of by him in the most disparaging terms, and to whom he says he was obliged to have recourse on points as they arose. Those principles have been illustrated copiously by arguments; and the decided cases from which those principles have been deduced are repeated over and over, and given in extenso. His chapter on adoption is the longest of all, occupying 122 pages, 42 of which are devoted to a criticism of, and severe reprehension on, a judgment of Sir Thomas Strange in a particular case. The seventh
chapter of the work in question is on contracts, and is composed only of such texts as are set forth in Colebrooke’s translation of the Digest of Jagen-nátha; and the eighth and ninth chapters are for the most part translations from the Miláksáhará. The addendum and Appendix respect only the law of adoption. It is apparent from his writings that he had not the slightest knowledge of the Sanscrit language, nor of the law books not translated into English. His work, however, is more useful than could be expected from an author who was possessed of such insufficient means, and who, moreover, commenced and finished it in one year.*

The Elements of Hindu Law was written by Sir Thomas Strange when Chief Justice of the Supreme Court of Madras. Although he had no knowledge of the Sanscrit language, yet almost every one of the elements contained in his work is based upon good and appropriate authorities cited below the page. In some instances, however, he has erred in not specifying the peculiar doctrines of the different schools, or in blending the especial doctrine of one school with that of another. The learned author does not so fully treat of the doctrines of the other schools as he does of the two schools in the South of India where he had to administer justice. His work therefore is of greater utility in the Courts of Madras and Bombay than in those of the other provinces. The second volume of the work, which contains cases and law opinions appended by the learned author to his work, under the title of “Responsa Prudentum,” or opinions of the Pandits, is indeed very valuable, almost every one of them being followed by remarks from the pen of Colebrooke, Sutherland, and Ellis, or one or other of them; and the work is rendered still more valuable by containing the opinions of Colebrooke in answer to letters from the author. The above opinions and remarks are truly responsa prudentium, and the author’s seeking Colebrooke’s opinion on every difficult point, and his publication thereof in support of what he wrote, are actiones prudentis.

The Principles and Precedents of Hindu Law composed and compiled by Mr. (afterwards Sir) William Hay Macnaghten, are the most

---

* “It is to be regretted,” says Mr. Morley, “that the whole work is pervaded by a spirit of exaggerated self-estimation and unjust depreciation of every thing not consonant with the author’s professional prejudices.”
clear and lucid of the digests hitherto composed by natives or Europeans. The first volume of this work treats of proprietary right, inheritance stri-dhana, partition, marriage, adoption, minority, slavery, and contracts, and contains a translation of a portion of the Mitakshara. The second volume consists of precedents or opinions of the Hindu law officers delivered in, and admitted by, the several courts of judicature and examined and approved of by the author himself. This volume is very useful, and it would have been much more so had the author published in it the very valuable opinions and remarks of Mr. Henry Colebrooke, contained in Strange's Elements of Hindu Law; and his first volume too would have been more excellent and authoritative had he all along cited authorities in support of the principles and doctrines therein contained in the same manner and with the same prudence as Sir Thomas Strange has done.

* Mr. Morley says:—"In a late judgment delivered by the Privy Council, Sir William Macnaghten's work is mentioned as by far the most important authority amongst the Hindu law-books by European authors; and it is stated, on the information of Sir Edward Ryan, to be constantly referred to in the Supreme Court of Calcutta as all but decisive on any point of Hindu law contained in it; and that more respect would be paid to it by Judges, than to the opinions of the Pandits." (But see ante p. 569.) If the expression 'Hindu law-books' mean those composed by Europeans, Macnaghten's work is for the greater part such as it is stated to be; but if it comprehend also translations and the remarks and written opinions of Europeans, then whatever has come from the pen of that eminent scholar and lawyer, Mr. Henry Colebrooke, ought to be regarded as of greater weight; especially his translations of the Dnya-bhadsya and Mitakshara, the former of which works is standard law in Bengal and the latter is respected in all the schools from Benares to the Southern extremity of the peninsula of India as the chief ground work of the doctrines they follow: and the translations themselves are also master-pieces, and accompanied as they are with translations of the most illustrative and appropriate comments, &c. they are perhaps more useful than the originals. The translation of the Datta-mimamsa and the Datta-chandrika, the standard law tracts on adoption made after the manner of Colebrooke by his nephew, Mr. Sutherland, and the translation of the portion of the Mitakshara made by Sir William Macnaghten, and those of the Dnya-krama-sangraha and Vyasa-sra-mayika are of equal authority with the above. Next in importance are the remarks and opinions of Colebrookes, "whose learning," says Sir Thomas Strange, "in that abstruse science, drawn directly from the original and the most authentic sources, stands acknowledged in Europe as well as India." The remarks and opinions above alluded to convey, in most instances, not only his strictures on the points referred to opinions reported, but references also to printed authorities in support of his observations, or of the answers of the Pandits. It is with reference to one of those opinions that, Mr. Shakespear, an able Judge of the Sudder Dewanny Adawlut at Calcutta, said, alluding to Sir William Macnaghten: "Now I imagine Mr. Henry Colebrooke to be the highest European authority on matters of Hindu law; but supposing others to be equally well read, no one can be placed in competition with him.
The work entitled "Treatise on Inheritance, Gift, Will, Sale, and Mortgage" by F. E. Elbering Esq., late of the Danish Civil Service, contains some principles of the Hindu law, and on the whole is a good compendium, but as regards the Hindu law cannot be viewed as quite a safe guide. Although the author has acted judiciously in citing authorities and precedents in support of the principles contained in his work, yet his precaution seems to have sometimes failed him. The author appears totally unacquainted with the Sanscrit language, in which (to use the expression of Sir William Jones) the Hindoo law is for the most part locked up; and more could not therefore be expected from one, whose knowledge of the sources of that law is so limited.

Steele's Summary of the Law and Custom of Hindu Castes, printed by order of the Governor in Council of Bombay, is inconvenient for reference, on account of a want of proper arrangement; but it contains a mass of useful information and may always be consulted with advantage. He divides his works into three parts, law, castes, and existing customs: the two latter divisions are especially useful, as containing a quantity of matter not to be met with in any other English book.

Colebrooke's Treatise on Obligations and Contracts hardly comes within the class of works treating of Hindu law, inasmuch as it relates to the subject of contracts generally; he has, however, illustrated the law of contracts throughout by references to the Hindu system; and the student will find much that is valuable regarding that system under those titles which the learned author has completed. Unfortunately the work was never finished, and the preface and preliminary matter, promised by the author in the first and only published volume, have never seen the light.

The tract written by Rājā Rām-mohan Roy treats chiefly of proprietary right, supported by citations of authorities; the Sanscrit
texts quoted being accompanied with English translations. It would have been a great benefit to the public had similar essays on the other heads of our law been written by that eminent scholar.

The Table of Successions by Bābu Prasanno Kumār Thākūr, a living authority of great experience and repute, is a very ingenious production: it presents in one view the whole order of succession to property whether that of males or females, with useful and explanatory notes. It is in fact a Digest of the Digesta, but requires ability to understand the plan and master the contents.

I have, I think, given an all but complete list of the works which treat of the *vyavahāra* branch of our law. It remains to notice how justice is administered in accordance with that law on which so many works are extant. The judges, barristers, pleaders, and others who know English, have recourse to the English translations and digests. But no such means are available to the numerous native judges, pleaders, and suitors who do not know that language, and are not furnished with translations or proper treatises in the vernacular.* They are therefore entirely dependant on the *Pandits*, the venality of many of whom has disparaged the character of that body (though some were and are indeed most upright as well as learned) to such a degree that we should be justified in adopting the language of Sir William Jones already cited.

Add to this, it happens in many cases that in consequence of the Mofussil pleaders having no means of knowing the law except from the mouths of *Pandits*, no question touching the *Hindu* law has been raised

---

* The law tracts hitherto written in Bengalee are four in number; but they are deficient in many respects and therefore of very little utility: they vanished as soon as they appeared, having never been brought into use. The first of these is entitled the *Vyavahāra ratnamāla* written by Lakṣmy Nārāyana Nyāyāntakāra in the form of questions and answers with the authorities in Sanscrit. This work contains a succinct view of the law of inheritance according to the doctrines of Jñānā-tīrthā, contrasted with those of the Māhākāra, together with a short treatise on adoption. The next is the compilation by Rāma-jīvan Tarakāntakāra. It is a collection of the doctrines of the *Dīya-bhāga* and other works. These two works are mentioned in a letter from the Bengal Government to the Court of Directors under date the 22nd of February 1827, as being among the works encouraged and patronised by the Government. The third was written by Ganga-kishore Bhattachārja of Bhākard. It treats of inheritance, impurity, and expiation, but superficially and imperfectly. The fourth is a little pamphlet written by Abhayadēvan Taraka-panchākāra, a well known logician. This book contains only the abstract principles of the *Dīya-bhāga*. 
until they have come in appeal before the Sudder Dewanny Adawlut, where the pleaders, familiar with the law tracts in English, have raised law points and then the cases either result in nonsuit or are remanded to be tried de novo, and thus the parties are fruitlessly burthened with costs of the two Courts. This evil has been very little or very partially remedied by the English translations and digests of the Hindustani law, they being of use to those only who know English, and who, compared with the mass of judicial officers and legal practitioners in the Mofussil, are insignificant in number; consequently, without a good digest in the English language, combined with a corresponding one in the vernacular of the country, the evil could not be removed, nor the desideratum felt by Sir William Jones and others supplied. It was a matter of great regret that no such endeavour had hitherto been made. The Government have enacted that the cases of the Hindus, regarding inheritance &c., shall be decided according to their law, but have afforded no means of making a proper use or checking the abuse of that law. This was remarked to the author by one of the most intelligent judges of the Sudder, now no more, who at the same time requested him to translate into Bengalee and Urdu the Principles of Hindu Law by Sir William Macnaghten. That work was thereupon minutely gone through, with a view to determine if a translation of it would be sufficient for the purpose, when it was judged that the work itself required some additions to be made to it and some portions to be rectified to render it correct and complete. The translation and publication of the Dāya-bhāga and Mitakshara on inheritance, the Daṭṭaka-mimāṃsā and the Daṭṭaka-chandrikā were considered likely to be more expensive and tedious than useful at present, inasmuch as considerable parts thereof are composed of arguments tending to establish the author’s own opinions and to refute those of others. It would moreover be very difficult for such as would not thoroughly study and digest them readily to discover the principle or decision regarding any point; for it is not rarely the case with those works that in one place a principle appears to be laid down as decisive, but in another (perhaps at the distance of many pages) will be seen a passage which refutes and explodes the former and establishes another. Translations of those works cannot therefore be of great use to those who cannot devote much time to a diligent study of their contents. Besides, now-a-days the judges for the most part consider it safe and convenient to follow the
decisions of their learned predecessors, instead of taking the trouble of ascertaining for themselves the law on the point or points at issue. Hence, the principles laid down in the previous decisions and the opinions of the law officers followed in those decisions and admitted by the courts of justice, form in a great degree the practical part of the law. Consequently in the present state of legal practice it will not be enough if a digest include only the principles contained in the law tracts and the authorities on which they rest; but to be practically useful, such a work is needed as will comprise all the principles laid down in the current law tracts, the unreversed or final decisions, and the admitted law opinions, illustrated by precedents. Moreover it is required to be not only in the vernacular but also in English, inasmuch as all the desiderata are not to be found in any single English book, and perhaps not in all of those hitherto written. It is moreover very difficult for a person to procure a large number of the English books on the subjects in question, and still more so, if he be in possession of them, to find out what he requires without losing much time in the attempt. To compile a work of the above description requires, I confess, more time and talent than I possess. But as no one more talented and experienced has undertaken this arduous task, and the want of such a work continues to be felt by both Mofussil and metropolitan practitioners and others, I commenced the work in the hope of providing for the defect as far as my humble abilities would allow, and the following pages constitute the result of my labours.

I thought at first that it would be sufficient to supply the vyavasthás or principles in Bengalee and English, with authorities and precedents bearing thereupon. But it occurred to me that if I did not give the Sanscrit passages expressive of those principles and the texts of the holy sages and other great authors on the authority whereof those principles were laid down, there would still be left for the ingenious portion of the Pandits a field to work upon. And the little experience

* They ought, however, to be warned that, amongst the decisions passed in accordance with the Hindu law, there are some which are not correct and accurate with reference to that law, and as decrees are in themselves not law but merely the application of the law to particular cases, and as the dispensers of justice are by their oaths bound to decide each case upon its own merits in conformity with law, usage, and principles of justice, they should not (and cannot conscientiously) follow a precedent without being satisfied that that precedent is in conformity with the law they are to administer. Precedents, therefore, ought to be applied after great consideration and with due circumspection.
that I have had in this department of jurisprudence suggested to me that it was necessary to publish separate books for Bengal and the other schools, as it is very difficult to preserve all along the distinction between the laws as current in Bengal and those in the other schools, so much so that even Sir William Macnaghten, who seems to have taken much care about it, has sometimes forgotten it, and blended the special doctrines of one school with those of another. But even were I careful in making the distinction throughout, still the reader who would not make himself master of them, would very probably overlook them and fall into error.* Add to this the vernacular language of the different schools not being one and the same, the principles, precedents, &c. having reference to Bengal required to be translated into Bengalee, and those peculiar to the other schools into the vernaculars of those provinces, at least into Urdu, which in a manner is understood throughout those countries. If, however, all the principles, &c. were to be thrust into one work and translated into Bengalee and Urdu, the work would not only be swollen to an inconvenient extent, but the reader would have to pay for a portion which he would not require. On these considerations I have resolved on two separate books: and the present is the book for Bengal.

In this book the vyavasthas or principles laid down in the Dāya-bhāga, Dāya-tattva, Dāya-krama-sangraha, Sri-krishna’s commentary on the Dāya-bhāga, and Jagan-nātha’s digest, and also in the other Sanscrit books respected in Bengal, and the decided cases and precedents, are inserted regularly and consecutively; and under each of these, the reason (if any) for the establishment of such vyavastha is given; after which the authority or authorities in support thereof have been cited with the name of the author or authors. If any phrase or term in the text required to be expounded, a letter within parenthesis is put after that, and an explanation thereof given generally in the words of some commentator or digest-writer in a following paragraph beginning with the same letter within parenthesis, in order that the ingenious Pandits

* “In a general compilation,” says Mr. Colebrooke, “where the authorities are greatly multiplied, and the doctrines of many different schools and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school and follow the train of reasoning by which they are maintained. He is confounded by the perpetual conflict of discordant opinions and jarring deductions, and by the frequent transition from the positions of one sect to the principles of another.”—Dā, bhā. pref. p. iii.
may not, for the purpose of misleading, give a different turn to the phrase or term, for they have no authority to give a meaning or exposition different from that adopted by the commentators or authors of each school; and if a principle is deduced from such explanation, that also is given with the authority or authorities, if any. Then, in foot notes, references are made in abbreviated forms to the sanscrit and English books, and the volumes, chapters, sections, and pages, at which the nyavasthas, authorities, &c. contained in this book are to be found. Almost the whole of the most interesting and valuable remarks and observations of the Sanscrit and English writers on the Hindu law have been inserted herein, occasionally in the body, but generally in the foot notes, which contain also much interesting information. After giving the principles, authorities, &c. respecting one portion of a subject, I have given the whole of Macnaghten's precedents bearing thereupon, that is, the legal opinions on the same subject admitted by the several courts of judicature and examined and approved of by that learned gentleman.* Then are given the decided cases illustrative of, and bearing on, one or more of the nyavasthas on the same subject. Of these, the decided cases and precedents are given in English and Bengalee, and the rest generally in Bengalee, Sanscrit and English: the Bengalee in the first and the Sanscrit in the second column of the left hand page, and the English in the page to the right thereof. To save the reader time and trouble I have, moreover, kept the nyavasthas distinguished by numbers, large type, and the marginal expression "nyavastha," that he may at once find them out without being obliged to look over the entire page. The nature of the rest of the contents also will be easily known by the several marginal expressions used for the purpose.

Most of the report books from which the cases have been taken being rather scarce, it was not considered sufficient to give only the names of parties and dates of the decisions, leaving the readers to procure,

* These extend as far as the year 1829. I had a great desire to select and add other admitted opinions of the law officers down to the present time, but have been unable to do so, as they had been burnt in pursuance of the orders of the Sudder Court.

I reserve for the second book, the response prudentia and the valuable remarks thereupon which constitute the second volume of Strange's work on Hindulaw, they having relation to cases of Southern India and the law as current there.
and refer to, the original books, a complete set of which (if at all procurable) would perhaps cost them more than ten times the price of the present work, and even then, without a translation in the vernacular, they would be of very little use to those who do not read English. I have therefore given in English and Bengalee the whole of the important portion of almost every decision.

In selecting the decided cases up 1850 bearing on one or more of the vyavasthās under each head, Mr. Morley's Analytical Digest, in which the substance of the decided cases has been well arranged under proper heads, has been of great assistance to me. The book is very convenient for use and saves those, who search for precedents on particular points, a great deal of time and trouble. The only thing to be regretted is, that the compiler, being as he is a learned barrister, has not taken the trouble of himself drawing up abstracts of the Sudder decisions, especially those in the Select Reports, instead of putting down their own marginal notes which are sometimes inaccurate, sometimes insufficient, and often not such as they ought to be. His introduction to the Hindu law is full and elaborate. I have extracted some passages therefrom almost verbatim, because I found them to be correct and so well written that I thought I could not do better.

In the Supreme Court the Hindu law governs suits between Hindus in respect to contracts, succession, and inheritance,* and in the other Courts in respect to succession, inheritance, marriage, caste, and religious usages and institutions.† These therefore have been the subject of the present work, and not the whole of the eighteen

---

* The statute 21st Geo. III, Chapter 70, provides "that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party shall be determined, in the case of the Mohammedans by the laws and usages of Mahomedans, and in the case of Gentooce by the laws and usages of Gentooce."

† By Section 15, Regulation IV, 1793, re-enacted for Benares and the Upper Provinces by Regulations V of 1795, Section 3. and Regulation III of 1803, Section 16, it is provided that "in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Hindu laws with regard to Hindus are to be considered as the general rules by which the Judges are to form their decisions." Although the provisions in the enactments cited would appear to exclude cases of contract, yet there are questions incidentally involved in this subject, and it is so interwoven with cases which it is the duty of the Courts to decide agreeably to the Hindu law, that attention to the principles of the one may be essential to the due adjudication of the other. For instance, in a claim of inheritance the defendant may plead a title by purchase, and the question will arise as to how far the ancestor was at liberty to contract.—See Mass. M. L. prof. pp. viii, viii.
titles* of the Vyavahara konda of our Dharma Shastra. Of these again, as questions connected with succession, inheritance, (which comprises also usage, maintenance, partition and exclusion from inheritance,) adoption, debt, gift, and sale are frequently brought before the Courts of Justice, they have been copiously treated of; while the other subjects have been but slightly adverted to, they being generally adjusted by reference to private arbitration. And designed as this work is for practical utility, I have omitted those questions regarding inheritance, &c. which are obsolete in the present age, such as the doctrines relative to the various descriptions of sons, other than the owasa and dattaka, and those respecting sons by mothers of different tribes, and marriage with females of a different class, as also some topics of contract, namely, evidence, &c. the law regarding which is not followed in the established Courts of Justice.

This book is divided into two volumes, the first of which is now offered to the public. The second volume which is to contain the chapters on marriage and stri-dhan, adoption, and exclusion from inheritance, and a few remarks on castes, &c. will not be of the same bulk, and will, I hope, be soon ready for publication.

On points difficult and doubtful I have consulted Babu Prasannokumār Thākur, whose learning in this abstruse science, drawn from the fountain head as well as from other sources, coupled with his long experience and his practice at the Sudder bar, of which he was for so many years the ornament and leader, is everywhere acknowledged, and who, though engrossed by various avocations of high importance, has readily given me all the assistance I required. I cannot conclude these remarks without acknowledging my great obligation to him for so much and valuable assistance received. Nor can I omit to express

* “Of those titles, the first is debt, or loans for consumption; the second, deposits and loans for use; the third, sale without ownership; the fourth, concerns among partners; the fifth, substraction of what has been given; the sixth, non-payment of wages or hire; the seventh, non-performance of agreements; the eighth, rescission of sales and purchases; the ninth, disputes between master and servant; the tenth, contests on boundaries; the eleventh and twelfth, assault and slander; the thirteenth, lacony; the fourteenth, robbery and other violence; the fifteenth, adultery; the sixteenth, altercation between man and wife, and their respective duties; the seventeenth, the law of inheritance; the eighteenth, gaming with dice and with living creatures. These eighteen titles of law are settled as the ground work of all judicial procedure in this world.—Manu, Ch. 8. Vs. 4—7.
my best thanks to the present professor of law in the Government Sanscrit College, the most learned Pandit Bharat-chander Shiromani, whose opinion too I have obtained on difficult and doubtful points, and whose valuable assistance I have received on these and many other occasions. I also gratefully acknowledge the obliging assistance occasionally rendered me by Mr. W. Montrouz, Barrister, while we both were at the Sudder Court.

Though I have spared no time that it was possible for me to bestow in collecting and digesting all that is most useful for the administration of the Hindu law, as current in Bengal, in the most valuable law tracts and books of decided cases and precedents, and have omitted nothing which diligence, in the midst of official avocations, could effect to render the work complete in its kind and fitted to supply the desideratum felt, yet it is not for me to say how far my efforts may be crowned with success. The judgment as to whether the work is adapted to accomplish the objects I have had in view must, in this as in all similar cases, emanate from that most impartial of all tribunals, Public Opinion.

PREFACE TO THE SECOND EDITION.

The first impression of this work consisting of 1000 copies has been sold. The author feels very deeply indebted to the public for this unequivocal mark of its approbation and has strenuously laboured to render the work less undeserving a continuance of the favor with which it has been honored. In the prosecution of this object he has subjected every part of it to a careful revision, has endeavoured to eradicate the errors that had escaped his notice, to improve those parts that were incomplete and to supply such matter as had been omitted. He has enlarged the work much by the addition of numerous decisions of the Privy Council, the Sudder, Supreme and High Courts, as well as by the insertion of several useful texts, remarks and notes. And he has carefully noted those cases by which doubtful points have been set at rest and disputed questions of law settled. The Index has been thoroughly revised, and made much more copious than before, especially in those parts which relate to adoption and the succession of widows.
The author has thought it advisable to separate the English from the Vernacular and to consolidate the two Volumes into one. English students do not require the vernacular and the retention of it in the present edition would have not only swelled the work and made it unwieldy, but also doubled the price. As at present offered the work is of 8vo. size consisting only of this volume with an Index attached. It is thus convenient for carriage, handling and reference.

The author would draw attention to the fact that though the English in this edition is separated from the vernacular, great care has been taken not to disturb the internal arrangements. The Vyavasthás or principles in English bear the same numbers as those in the Vernacular, and they as well as the other passages are placed in the same consecutive order. Thus it is quite easy to trace out the corresponding passages in the two books.

The author regrets that his official duties which are many and great should have precluded him from giving to this Edition so much time and attention as the subject demands. Nevertheless no ordinary amount of labour has been expended upon it, and no pains have been spared to make it more useful and complete than the former. It is hoped that the effort has been successful.
SUMMARY OF CONTENTS.

CHAPTER I.
THE ORDER OF SUCCESSION

SECTION I.—Heritage defined

SECTION II.—Of the cause of heritable right or what constitutes title to inherit

Of the child in the womb
Of the civil death
Of missing persons

SECTION III.—Succession of the son, son’s son, and great-grandson

SECTION IV.—On (the right of) succession to the estate of one who leaves no son, son’s son, or great-grandson—

The widow’s right of succession
The extent of the widow’s right in the property inherited from her husband
The daughter’s right of succession
The daughter’s son’s right
The father’s right of succession
The mother’s right of succession
The brother’s right of succession
Succession of the brother’s son
Of the brother’s son’s son
Of the father’s daughter’s son (sister’s son)

Remarks on the discrepancies existing in the books of the Bengal school
Order of succession according to the Dáya-bhága
Order of succession according to the Dáya-tattwa
Order of succession according to Sré-krishna’s commentary on the Dáya-bhága
Order of succession according to Jagan-nath’s Digest (Vivóda-bhangárvana)
Succession of the paternal grandfather
Of the paternal grandmother
Of the paternal grandfather's son, grandson and great grandson and daughter's son ... 289—296
Succession of the paternal great grandfather ... 289
Of the paternal great grandmother ... 296
Of the descendants of the paternal great grandfather ... 297
Succession of the maternal grandfather ... 298
Of the descendants of the maternal grandfather ... 297, 298
Succession of the maternal great grandfather, and of his descendants ... 298
Succession of the maternal great great grandfather, and of his descendants ... 298
Succession of the Sakulīyas or distant kinsmen ... 303
Succession of the Samánodakas or distant kindred ... 307
Succession of the spiritual preceptor and the rest ... 307
Succession to the property of a hermit and the rest ... 312

CHAPTER II.

Section I.—On usage or custom, &c. ... 314
Section II.—On the law of migration ... 334

CHAPTER III.
CHARGES ON THE INHERITANCE.

Section I.—Payment of debts ... 342
Payment of debts contracted for the family ... 356
Section II.—On the obsequies of the late owner ... 363
Section III.—On initiation of the late owner's son and daughter ... 365
Section IV.—On maintenance ... 368

CHAPTER IV.

Section I.—On minority ... 396
Section II.—On guardianship ... 399

CHAPTER V.

Section I.—Partition by a father ... 413
The time of such partition ... 413
Partition of the father's self-acquired property ... 418
A share must be given to the soulless wife ... 424
Self-acquired and ancestral property defined ... 429
Partition made by a father of the ancestral property ... 433
Father's share in the son's acquisitions ... 447
SECTION II.—Partition by brothers ........................................ 452
The period of such partition ............................................. 453
Extent of each brother's share ........................................... 468
Partition of the acquisitions made by using the common
stock .............................................................................. 468
By whom partition can be enforced ..................................... 478
The mother is entitled to a share ......................................... 480
The paternal grandmother is entitled to a share .................... 491
Effects, acquisitions &c. liable to partition ............................ 500
Effects, acquisitions &c. not liable to partition ..................... 503
Participation of a son begotten after partition ....................... 529
Partition of the property of re-united partners ...................... 534
Distribution of effects concealed at the time of partition
and subsequently discovered .............................................. 538
The ascertainment of a dubious partition .............................. 540
Allotment of a share to a parcer coming after parti-
tion ............................................................................. 546

CHAPTER VI.
THE EXTENT OF A PROPRIETOR'S POWER TO DEVISE
OR DISPOSE OF.

SECTION I.—Of the disposition of divided or sole property .... 549
SECTION II.—The extent of a co-parcer's power in undivided
property ........................................................................... 592

CHAPTER VII.
SUBTRACTION OF WHAT HAS BEEN GIVEN.

What is required for the validity of a gift ......................... 600
SECTION I.—On unfit gifts, that is, gifts and other transfers of
property inalienable ........................................................ 611
SECTION II.—On fit gifts, that is, gifts and other transfers of pro-
property alienable ............................................................ 616
SECTION III.—On irrevocable or valid gifts .......................... 621
SECTION  ......................................................... 624
Remarks on various kinds of contracts ............................... 641
CHAPTER VIII.
ON MARRIAGE AND STRI-DHAN.

Section I.—On marriage - - - - - - - - - - - - 645
Persons competent to give a girl in marriage - - - - 654
Persons between whom matrimony is prohibited - - 656
Bigamy and polygamy - - - - - - - - - - - - - - - 672
The duty of a husband going abroad to his wife, and hers to him - - - - - - - - - - - - - - - 674
For what fault a wife may be deserted - - - - - 675
What husband may be deserted - - - - - - - - - 677
Adultery - - - - - - - - - - - - - - - - - - - - - 679

Section II.—Stri-dhan - - - - - - - - - - - - - - - 681
Stri-dhan defined and explained - - - - - - - - - 681
Extent of a woman’s power over her Stri-dhan, and that of her husband over the same - - - - - - - - - 687
Succession to the Stri-dhan of a maiden daughter- - 707
Order of succession to the different kinds of the Stri-dhan of a married woman having children- - - - - 708
Succession of a woman’s children to her joutaka property 708
Their succession to the ojoutaka property - - - - 715
Succession to a woman’s separate property given by her father - - - - - - - - - - - - - - - - - - - - - - - 717
Succession to the separate property of a childless woman 719
Order of succession of the father, mother, brother, and husband, with reference to the different forms of marriage, to a childless woman’s property not given by her parents, and not received as fee or gratuity, or gift subsequent- - - - - - - - - - - - - - - - - - - - - - - 722
Succession of heirs in default of successors as far as the father, mother, brother, and husband, to any description of separate property of a woman married according to any form - - - - - - - - - - - - - - - - - - - - - - - 723
Table of succession to the different kinds of the Stri-dhan 733

CHAPTER IX.—ADOPTION.

Section I.—A son is necessary - - - - - - - - - - 734
Section II.—In want of a legitimately begotten son (ourass) a substitute for him is necessary- - - - - - - - 738
SECTION III.—On the substitution of an oursa daughter— 749
SECTION IV.—Who can and who cannot adopt a son 754
SECTION V.—Who may or may not give a son in adoption 821
SECTION VI.—Who can and who cannot be adopted 828
SECTION VII.—On the Dwyámushyáyana (son of two fathers) 846
SECTION VIII.—Age of the body to be adopted 853
SECTION IX.—The form of adoption 866
SECTION X.—Merit and demerit of adopted sons, in reference to
the nature of gift, acceptance, relation, age, form, &c. 880
SECTION XI.—Effects of adoption 887
The sapinda relation of, and with, an adoption. 890
Impurity 893
Shraddha &c., to be performed by an adopted son 896
Succession, &c., of adopted sons 905
Whether a dattaka (given) son is entitled to inherit
from a bandhu 952
Succession of a Dwyámushyáyana (son of two fathers) 979
Adoption indefeasible. 983
Miscellaneous cases respecting adoption 987
CHAPTER X.—Exclusion from inheritance 995
CHAPTER XI.—On the castes of Hindus 1032
ADDENDA.—Abstract of the law of inheritance, &c. as current in
the schools other than that of Bengal 1039
INDEX, Alphabetical I
OPINIONS with respect to the merit and utility of the present
work.
NOTE.
ON THE ORTHOGRAPHY AND ORTHOPHY OF SANSKRIT AND
BENGALI WORDS.

To ensure the proper pronunciation of the Sanskrit and Bengali words in the English part of this work, I have written them according to the following Romanised system,* partially modified from that originally proposed in the first volume of the Asiatic Researches, and followed by Sir William Jones, Mr. H. Colebrooke, and others.

A : as a in call or salt.
A' : as à in fár.
I : as i in fit.
I' : as i in machine, and as ee in feed.
U : as u in pull.
U' : as u in rule, and oo in pool.
E : as the first e in there, and as ai in pain.
O : as o in go.
Oi : as oi in heroine or like the Greek dipthong oi in poinen, a shepherd.
Ou : as ou in out.
Oy : as in joy or boy.
Kh : as kh in black-hole.†
G : as g in gewgaw.
Gh : as gh in big-house.†

Ch : as ch in chalk.
Chh : as chh in much-haste.†
Jh : as in geh in college-hall.†
T : as t in talk, or soft as in tu (Italian or Portuguese.)
Th : as th in hot-house,† or soft as in thoroughly.
D : as d in daw, or soft as in da (Portuguese.)
Dh : as in good-house,† or soft as the last aspirated.
Ph : as ph in up-hold.†
Bh : as bh in Hob-house.†
Y : as y in joy and boy-hood.
W : nearly as w in dwarf.
Sh : as sh in shot.
S : as s in soft or sugar.

ABREVIATIONS.

Coleb. Dig. " Colebrooke’s Digest† or translation of Jagan-nátha’s Digest.
Dí. T. " (Raghu-nandana’s) Dáya-tattwa.

* I have not, however, changed the spelling of those words which are uniformly spelt by all, as Ghose, Bose, Calcutta, &c.
† When pronounced indistinctly.
Cons. H. L. "(Macnaghten's) Considerations on Hindoo Law.
Str. H. L.† "Strange's Elements of Hindoo Law.†
Chap. or Ch. "Chapter.
Sect. "Section.
V. "Vachana or Verse; versus.
P. "Page.
D. "Decisions or Decree.
J. "Judge or Puisne Judge.
C. J. "Chief Justice.
S. C. "Supreme Court.
P. C. "Privy Council.
H. C. A. "High Court in its Appellate jurisdiction.
H. C. O. "High Court in its Original jurisdiction.

† First Edition.
VYAVASTHÁ-DARPANA,

CHAPTER 1.

SECTION 1.

HERITAGE DEFINED.

I. The word 'heritage (Dáya)' is used to signify property, in which right dependant on relation to the former owner (a) arises on the extinction of his ownership (d).*

(a) The condition, 'dependant on relation to the former owner,' obviates the possible use of the word heritage in speaking of gift and the like.—That relation, originating from birth, study, marriage, and so forth, is filiation, fellowship in study (of the veda), conjugal union, or the like.†

(d) The phrase 'on the extinction of his ownership,' obviates the use of the term heritage, under the text which describes the concurrent right of the wife during the life of her husband.—Sri-krishna Tarká-bhúskara, quoted by Jagan-nátha Tarka-panchánana author of Viváda-bhánagá-náva.†


The term heritage signifies by acceptance right vested in a relative, in respect of property, in right of relation (as son or otherwise) to its former owner on the extinction of his right.—Dáyásitaiva.

† Coleb. Dig. Vol. II. p. 517.
SECTION II.

WHAT CONSTITUTES TITLE TO INHERIT.

**Vyavastha**. 2. The existence (of the son), at the time of the father's death (i)*, alone constitutes the son's title†.

The meaning is, that the existence of the son is the sole cause of (heritable) right; to which the time of the father's death is an aid. *Sri-krishna Tarkatankara's* Commentary on the *Dyabhaga*.

---

* Under the text which declares "property common to the married pair," the wife having an interest in the property of her husband during his life, and there being nothing to annul her right after his decease, how can the son and the rest have a claim to the estate? To this it is answered,—No; for, it is established that her right is (actually) lost by the lapse of her husband's right. Accordingly, the right of the wife is divested even when the effects are given away by her lord. See Coleb. Dig. Vol. III. pp. 487,488.

Moreover, respecting the wife's ownership in the property of her husband, it has been said by *Manu* and others: "if she make a gift which is indispensably necessary, if she expend in periodical ceremonies, in entertaining guests, and so forth, while her husband is absent, such ownership will save her from the guilt of theft."—*Mitakshara*.

Although *Jimsa-arushana* has at first said: "there is no proof of the position, that the wife's right in her husband's property, accruing to her from marriage, ceases on his demise," yet by saying immediately after it, "but the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue," (Vide Coleb. *Da. bhad*. Ch. XI. Sect. I. para. 26), he has of course admitted that the wife's right (accrued from marriage) to her husband's property, in common with him, ceases on his demise.


Sir William Macnaughten defines the cause of heritable right in these terms:—"The most approved conclusion appears to be that the inchoate right arising from birth, and the relinquishment by the occupant (whether effected by death or otherwise,) conjointly create this right, the inchoate right which previously existed becoming perfected by the removal of the obstacle, that is, by the death of the owner, (natural or civil,) or by his voluntary abandonment;" and he refers to *Sri-krishna*, cited in Colebrooke's Digest, Vol. II. page 517, as his authority. This, however, is not the opinion of *Sri-krishna*, nor of any of the other authors of the law-books current in Bengal. None of them admits inchoate right arising
Here the expressions "father" and "son" (severally) indicate any relation. — Coleb. Dá. bhá. Ch. 1. para. 3.

Vyavastha. 3. (i) The phrase "the existence (of the son) at the time of the father's death" indicates also the factual existence of an heir in the womb.†

from birth. For instance, Jímúta-rañáma says: "There is no proof that property or right is vested by birth alone; nor is birth stated in the law as means of acquisition." (See Coleb. Dá. bhá. Ch. I. para. 19.) Raghunandana says: — "As to what is written in the Middhākarà, viz. 'by birth alone a person having ownership takes the property; this is a text of Goutama; so the venerable instructors maintain,'—that also signifies, the holy teachers maintain, that on the extinction of the father's right, his son, not any other relative, may take his property, because sons have right to the property of their father by the very relation of birth by which they are his issue, and which is superior to every other relation, It does not mean that sons have right by birth in their father's property, while his (the father's) own right subsists; for that would contradict Devāla's text: 'when the father is deceased, let the sons divide the father's property, for they have no ownership while the father is alive, and free from defect.'—Dāya-tattva. And Sri-krishna, a follower of Jímúta-rañáma, has no where used any expression which supports the proposition laid down by Sir William Macnaghten. On the contrary, Sri-krishna, in his comment on Jímúta-rañáma's Dāya-tattva, says: "the text of Goutama, which is cited in Middhākarà, is unauthorised, or, if it be authorised, it relates to the case of one, whose father dies while the child is in the mother's womb; else a father, who has a male issue, would not be independent in regard to his own goods." (Vide Coleb. Dá. bhá. Ch. I. p. 9.) He then submits an interpretation similar to that which occurs in the Dāya-tattva, and which is above quoted. Thus we are justified in the conclusion that Sir William Macnaghten's definition of the cause of heritable right is not according to the doctrine current in Bengal.

* That is to say, the expression "father" is meant to signify the predecessor or former owner, and "son" is meant to indicate any relative included in the order of succession as entitled to inherit. Thus (at the time of death of the former owner) the survival of the relation, entitled to succeed, is the cause of his or her right.

† "A share of the heritage with the brothers shall be allotted to those widows who have no offspring, but are supposed to be pregnant, to be held by them until they (severally) bear sons." — Vamshitha. Widows here signify wives of deceased brothers. If they be supposed likely to bear sons, shares must be also allotted to them: consequently, the meaning is, that shares are only allotted to the widows for the benefit of their sons (to be born).—Coleb. Dig. Vol. III. p. 86.

It is not necessary that the heir should be actually born; it is sufficient that he was begotten and afterwards born with vitality, when born with vitality, it is no moment how soon after the child may expire; the right of inheritance is acquired, and the inheritance devolves on the heirs of the child.—Elb. page 44, Sect. 84.
4 VYAVASTHĀ-DARPANA

Vyavasthā. 4. The birth of the infant must, however, be awaited; because, the issue, if a son, would at once succeed, if a daughter, its succession after the mother is contingent; whilst a still-born child would not in any way affect the inheritance.

Authority. Śrī-krishṇa Tarkālankāra in the following instances has admitted the right of the child in the womb.—In his exposition of Nārada's text: "where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, partition of heritage"—he says: "the term by sons is merely illustrative, for if it exclusively mean plurality and agency of sons, it cannot comprehend the partition made between two (parencers), by the intervention of an arbitrator, and (on account) of the child in the womb". He says also: "the text of Goutama, which is cited in Mitāksharā, is unauthorised; or, if it be authorised, it relates to the case of one, whose father dies while the child is in the mother's womb." See Śrī-krishṇa's Commentary on the Dāya-bhāga, Sans. pp. 2, 4, 18; the Mitāksharā, Sans. pp. 221, 222, and the authorities which are quoted in the chapter treating of partition, and which show that posthumous sons have heritable right to the ancestral property. See also the cases quoted in the succession of the father's daughter's son.

Hence the child conceived in the womb does not inherit, but it bars or suspends (for the time) the succession of other heirs (to the property to which it will succeed if born a son alive); for, were it held otherwise, (viz. that any inheritance or property vested in the child in utero, immediately after the extinction of the father's right, then, on its dying in utero, or abortion taking place, the mother would inherit as its heir and successor, but this is inconsistent with the law, and contrary to usage.

Vyavasthā. 5. However, according to Kātyāyana's text—"Let them deposit, free from disbursement, in the hands of bandhus and mitras†, the property of such as have not attained maturity, as well as of those who are absent; thus the property of minors should be

* See Daughter's Succession.
† 'Bandhu,' next of kin. 'Mitra,' a friend: See the Sections treating of partition.
preserved until they attain their full age,” (Coleb. Dá. bhá. Ch. III. sect. I. para. 17)—the property, which a child conceived in the womb can inherit on its being born a son (alive), should be deposited with its bandhu or mitra.

Roy Shám-ballabh versus Práṣ-krishṇa Ghose.

I. Kunja-behári had four sons,—Rám-ballabh, Braja-ballabh, Jagat-ballabh, and Bhakta-ballabh.—Rám-ballabh, during the lifetime of his father, died leaving a widow named Golok-maní, and Bhakta-ballabh died childless after his father’s death, leaving a widow named Bhagavatí. The Dacca Court of Appeal, after taking the opinion of the Hindu Law Officers, awarded one third to the two daughters of Jagat-ballabh (to be shared between them equally,) another third to Shám-ballabh, son of Braja-ballabh, and the remaining third to the widow Bhagavatí, because her husband had survived his father, and declared Golak-maní entitled not to a share, but) to food and raiment only, because her husband Rám-ballabh had died before his father. This award was affirmed by the Sudder Dewanny Adawlut.—4th July of 1820. S. D. A. R. Vol. III, p. 33.

Padu-maní Choudhurání Respondent.

II. Rám-keshab Roy had three sons—Rám-kumár Roy, Rám-iban Roy, and Rám-kamal Roy, of whom Rám-kumár died without issue, leaving a widow Musst. Padu-maní. After this Rám-keshab died, leaving his two remaining sons. The Pandits declared that the right of Rám-kumár Roy to the property left by his father Rám-keshab Roy was barred by his having died during his father’s life; his widow therefore was not entitled to any share of the property of her deceased husband’s father: she, however, was entitled to receive maintenance herefrom, and to take by inheritance, during her life, any property of which her husband had possession during his life. The Sudder Court accordingly dismissed Padu-maní’s claim, and declared that the option of suing the holders of the estate for maintenance was left to her.—14th of February 1825. S. D. A. B. Vol. IV. p. 19.
Rám-maṅi Choudhurání versus Hem-latá Choudhurání.

III. Rám-maṅi Choudhurání instituted a suit, and grounded her claim on that portion of the Vyavasthá of the Sudder Pandit in a former appeal (preferred on the part of Musst. Hem-latá Choudhurání versus Musst. Padu-maṅi Choudhurání, and, decided on the 14th of February, 1825, i. e. in the above case) which referred to her, and which was as follows:—“If either Rám-jiban or Rám-kamal died during the lifetime of Shankarí Dási, their mother, she would take the share of the deceased: if they both died before her, she would take the property of both. If the mother died first, and then the two brothers, the sons of (their sister) Musst. Rám-maṅi, if they survived them, would take their property, and after their death, Rám-maṅi would succeed thereto as their heir.”

The Sudder Court determined that the claim of the plaintiff was barred by the Vyavasthá given in the former case and quoted by her, because she had not a son alive at the time of her mother’s death, and because her brothers Rám-kamal and Rám-jiban had died before their mother.—6th of January 1835. S. D. A. R. Vol. VI, p. 3.

IV. Vide Ishwar-chander Kārfarmá versus Gobind-chander Kārfarmá, S. C. Cons. H. L. p. 74. See also Maṅi-mohan Bose versus Dhan-maṅi, 17th of November 1853. S. D. A. R. p. 910, and also the cases quoted in the succession of father’s daughter’s son.

Case bearing on the Vyavasthás No. 3, 4

I. In the case of Adwoita-chánd Mondal and others, petitioners, the opinion of the Sudder Court (present Tucker, Reid, and Barlow, Judges) was, that the act of birth or of conception of an heir in the womb was one and the same thing in the eye of the Bengal law, only that the birth of the infant must be awaited;* because, if the issue be a daughter, she would have no title; if a son, he would inherit. 17th of August 1843: 2 Sev. case 131. Vide Morley’s Digest, Vol. I, p. 327. Note.

* Accordingly, a certificate under Act XX of 1841 was granted to the mother of the heir then in the womb. See the final rabakári of the case.
CASE NO. 307 OF 1859.

Keshab Chunder Ghose and others, (Plaintiffs,) Special Appellants, versus Bishnopursaud Bose and others, (Defendants,) Respondents.

II. The point raised in this special appeal is, whether a father's daughter's or sister's son, not conceived at the time of the death of his maternal uncle, succeeds to the inheritance in preference to the paternal uncles of the deceased.

There can be no doubt at the present day, that a sister's son in existence at the time of the death of his maternal uncle, will, according to the Hindoo law as current in Bengal, succeed in preference to the paternal uncle of the deceased. The contention, however, now before us on the part of special appellant is to the effect, that if the sister is fecund and capable of having male issue, then although no male issue is in existence or *conceived* at the death of the brother, she is entitled to enter on the succession in trust for a possible male issue.

There can be no doubt, that there are decisions of the court founded on the Byrastha (Vyavastha) of the pundit of the court, in favor of the view now contended for by special appellant; but we are clearly of opinion looking to the principles of the Hindoo law, that that view cannot be successfully maintained, and we prefer to rest our judgment on principles rather than embarrass ourselves with the consideration of Vyavasthas which seem altogether to have lost sight of them.

The maxim of Hindoo law, on which we would base our opinion is this. That the right to succession is a right which vests immediately on the death of the owner of the property, and cannot, under any circumstances, to use the words of the learned Translator of the Supreme Court, Shâmâ-churn Sircâr, used in his Digest of Hindoo law, remain in abeyance in expectation of the birth of a preferable heir, *not conceived* at the time of the owner's death.

This proposition is itself founded on, and is in fact a corollary of, a fundamental doctrine of Hindoo law, as current in Bengal, viz. that the existence of the relative, entitled to succeed at the time of the predecessor's death, is the cause of his right, or, in other words, constitutes his title to succession; whereas, if the doctrine now contended for be admitted, the property of an owner, to use again the
words of the author above cited, will not be inherited by the acknowledged heir existing at the time of his death; but must be reserved for an indefinite period in expectation of the future birth of a preferable heir: thus the entire order of succession would become intercepted and broken.

But the doctrine contended for by special appellant, is said to be based upon the Dāyabhāga itself, the great authority in such matters in Bengal. The words cited to us, as supporting it, are as follows: "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured."

The words cited, occur in the Dāya-bhāga (Ch. I. Sect. 48) in connection with the subject of the partition of wealth inherited from the paternal grandfather. "When the mother is past child-bearing," says the authority, "partition among sons may then take place, still, however, by the choice of the father; but if the hereditary estate were divided, whilst she continued to be capable of bearing children, those born subsequently, would be deprived of subsistence; neither would that be right; for a text expresses it, 'they who are born, and they who are yet unbegotten, and they who are actually in the womb, all require means of support, and the dissipation of the hereditary maintenance is censured.'"

We are clearly of opinion, that the words relied upon will not support the doctrine contended for; amongst the commentators, there would seem to be a difference of opinion as to the extent of their application, and taken with the context, they seem to us to be used solely as conveying the moral rule upon which the foregoing legal obligation was based; they lay down, in short, as has been well remarked, a "moral rule not peculiar to Hindoo Legislation, but common to all civilized nations; but to construe such a passage as creating a legal right for the unbegotten at the expense of those that are born and living, is any thing but consonant either to the meaning of the text or to the spirit of Hindoo law."

We may observe, that we are not aware of any rule in any country, by which the inheritance remains in abeyance for an unbegotten heir;
though in all countries, as in this, on the birth of a posthumous son of
the deceased owner, property which has once vested by the death of
the owner, becomes thereby divested, as in this country, in such a con-
tingency until the birth of the son, it would remain in the possession
of the mother or other guardian of the son who may be born, until
its actual birth, as trustee for him.

As then, we are of opinion, that under the operation of Hindoo law,
the right of succession vested, at the death of the brother of special
appellant, in his maternal uncle, the special respondent before us, and
did not remain in abeyance, entitling her to possession in trust for a
son that might hereafter be conceived in her, we consider the judgment
of the Principal Sudder Ameen correct in law, and dismiss the special

Vide Birajá-moyee Appellant Versus Nabbo-krishna Roy Respondent;
and Ishán-chunder Roy versus Birajá-moyee. H. C. D. 15th of
September 1863.

Vide also the other cases quoted in the succession of the father's
daughter's sons.

Vyavastha. 6. Death merely (i. e. physical death) is not
meant: it (also) alludes to degradation for sin (u), the state of
a travelling devotee, and the like (e), because of the analogy of
the (circumstance which causes) extinction of right.—Coleb.
Dá. bhd. Ch. I. para. 31.

(u) Degradation occurs when one has slain a bráhman or committed
some other atrocious crime, and has not performed penance, and even
refuses to submit to it *; for Sír-krishna Tarkálankára † and Rághu-
rajasívaná ‡ are of opinion that the fallen sinner forfeits his right when
he has not done penance, and is averse to doing it.

* Coleb. Dig. Vol. III. p. 315. See the Chapter on exclusion from inheritance.
† See his Commentary on the Dhánamárga. Sans. p. 3. ‡ See Dháya-tattva, Sans.
page 3.
The state of a hermit, as well as the extinction of worldly affections is here comprehended under the term "and the like."—Sri-krishna’s Commentary on the Dāya-bhāga. See Coleb. Dā. bhā. p. 14.

After withdrawing his affection (from things of this world,) if he abdicate his estate in this form, “let this be no longer mine,” then indeed his right is divested by abdication; and afterwards, even though temporal inclinations revive, the right is not renewed. The resignation can only be known from the declaration of the party. Thus Raghu-nandana, as Jagan-nātha Turka-panchānana remarks, is justified.*

Vide Haftoon-nissa Begam Versus Rādha-binode Misser, in the widow’s succession.

Vyavastha’. 7. A person’s being absent and not heard of for twelve years entitles his heirs to inherit his property: this rule is founded on the presumption of his death.†

Authority. If no tidings of a person gone abroad be received for twelve years, his son and kinsmen should account him to be certainly dead.—Jama or Yama.


† In fixing the date of the death of missing persons, the holy sages (Rishis) and compilers are not of one opinion, as is manifest from the texts quoted in the Nirmaya-viṇḍaka: “So if the time of twelve years of a person’s absence have gone by, they shall cause his death-rites to be solemnized at the commencement of the thirteenth year.—(Vidddha Manu.) If no tidings be had of a person for twelve years, such person shall be treated as one dead by the burning of his effigy made of husha grass.—(Vrihatpata.) If any one’s father be absent, and neither a letter nor any news of him be received, then at the end of 15 years his effigy shall be formed and burnt in the manner prescribed by the law; from which date all his obsequies shall be performed.—(Bhavisya Purāṇa.) It is said in Madana-rasa that (the rule of) waiting for twelve years applies to all missing persons, except a father. But in Grijhya-kārikā, (which is of superior authority,) it is laid down as follows:—

“It is said that the obsequies of a missing person in the first period of life (i.e. under 50 years of age) should be performed after the lapse of 20 years, of one of middle age (i.e. under 75,) after fifteen years, and of a person in the last period of life (above 75 years) after twelve years” (from the day of his or her disappearance.)
There are only two periods of partition rightly declared: one, when the right ceases by the owner's degradation for his sin, disregard of temporal matters, or actual death: the other, by the choice of the father, while his right still subsists.—Coleb. Dā. bhā. Ch. I. p. 20, para. 44.

It is thus established that two periods exist for the partition of father's property.

The same periods also exist for the partition of a paternal grandfather's property, only with this difference that the choice of the father should be dependent on the cessation of the mother's (and step-mother's) catamenia.*—This will be fully explained in the Chapter treating of partition. q. v.

In truth, the sons at (each of) these two periods become entitled to partition, as is expressly laid down by Rāghu-nandana: "If the right

But Rāghu-nandana, a modern compiler respected in Bengal, having in his Tithi-tattva fixed the date of the death of missing persons according to the text of Jāma or Yama quoted under Vyavasthā No. 7, it has been the practice of the Hindus of this country to account and treat missing persons as dead immediately on the expiry of twelve years from the date of their last trust-worthy tiding, without any question of age or relationship.

Sir Thomas Strange has quoted (and he is followed by Sir William Macnaghten.) from Nirṛtya-sindhu merely what is therein given from Gṛihya-kārikā, and has stated that to be the opinion of the author of Nirṛtya-sindhu. This, however, is not the case; the author of the Nirṛtya-sindhu has expressed no opinion of his own; he has merely quoted the different opinions of the sages and compilers, as is manifest from the quotation above given in totidem verbis.

The same learned English writers say: "according to some authorities, the term of twelve years applies to missing persons whose age exceeds fifty years; for all under that age, the term allowed for re-appearance is twenty four years." (Vide Macn. H. I. vol. II. 9. Note.) But I find no authority which prescribes twenty four years for the re-appearance of a missing person of any age.

* Vide W. Dā. kra. sang. Ch. IV. p. 91, para. 1.; Coleb. Dā. bhā. Ch. I. para. 46; and Ch. II. para. 1.
of property be anulled by death, or by degradation, or by the quitting of the condition of a house-holder, the sons are entitled to partition; and so they are even though the right of property remain, if the father be devoid of wish to keep property which pertains to him.*—Dáya-táltwa, Sans. p. 3.

Musul. Ayábati (since deceased) versus Ráj-krishña Sáhu and others.

I. Braja-rám Sáhu had five sons,—Hari-krishña Sáhu, Joy-krishña Sáhu, Manohar-dás Sáhu, Ramákánta Sáhu, and Rám-kánta Sáhu.—Joy-krishña went to Jessore in 1197 B. S. and no tidings were ever heard of him afterwards. Braja-rám died in 1200 B. S. and after his death, Joy-krishña’s wife sued for her husband’s share in all the property acquired while her husband and his brothers were united. The Zillah Judge seeing that the funeral obsequies of Joy-krishña took place after a lapse of twelve years from the date of his disappearance; and that his father Braja-rám died in 1200 B. S., decreed the plaintiff’s claim on the ground of her father-in-law having died before her husband’s funeral obsequies were performed. The Provincial Court of Dacca reversed this decree on the ground of Joy-krishña being missing during the lifetime of his father, and consequently his wife and grandson (daughter’s son) having no claim to the property acquired by Braja-rám. A special appeal from this decision was admitted by the Sudder Court in consequence of their pandáls delivering a Vyavasthá stating—*that if a man is missing during the life time of his father, the Hindu-law allows twelve years for his re-appearence; that if three or four years after his disappearance his father dies, his wife is not immediately entitled to share in the property of his father, (the wife of the son not being mentioned in any of the treatises on inheritance as heir to the property of her father-in-law); but after a lapse of twelve years, if no tidings be heard of her husband, (and if there be no son, grandson, or great grandson,) she may claim her husband’s share of his father’s property.*

* See Coleb. Daś. śhá. Ch. I. Note 33.
But at the time of trying the case, the Court having perused a deed of partition entered into by Braga-rám, and also other documents, referred the case to their pandits for their opinion; and the pandits on seeing these papers, declared that in the present case, the wife and grandson of Joy-krishna had no right to any thing, but the sum fixed in the said deed for their maintenance, the will of the owner being all that is necessary in cases of self-acquired property, and that a division made of such property by the owner, who is not a minor, and is of sound mind, cannot be disturbed. The Court accordingly affirmed the decision of the Provincial Court.*—25th of April, 1820. S. D. A. R. Vol. III. p. 28.

II. In the case of Rám-náráyan Bandyopádhyáy (Banerjee) versus Bala-rám Bandyopádhyáy the doctrine of presuming the death of an absent person unheard of, after a lapse of twelve years (from the day of his departure) has been recognized and accepted by the Judges of the Court; and it has been declared by the second Pandit of the Sudder Dewany Adawlut, the Pandit of the Provincial Court of Calcutta, the head Pandit of the College, and another Pandit that, "he, who has absented himself for the period of twelve years, and of whom no intelligence has been received during that time, must be considered as certainly dead; and should he even return after that time, he had forfeited the rights of the living."†—East's notes, case 85. Morley's Digest. Vol. II. p. 152.

* Although the decision in the case turned on a matter of fact, rather than on a point of Hindu law, yet it may be observed as a rule of the Hindu law, that a missing person shall not be considered dead until the period of twelve years shall have elapsed from the date of his disappearance. In the present case as the father of the plaintiff's husband died before his son's death could be presumed, his son, that is the plaintiff's husband, must have been considered entitled to inherit, and through him the plaintiff, had there been no special agreement to obstruct the ordinary course of succession.—Note to the case above quoted.

† The particulars of this are given in the Chapter on exclusion from inheritance.
SUCCESSION OF THE SON, (AND IN THE MALE LINE OF THE)
GRANDSON AND GREAT GRANDSON.

Vyavastha. 8. When a person’s right of property ceases
by death, by degradation, by the quitting of the condition of
a house-holder, or by voluntary abandonment:—
The right devolves on the son, (a).*

Authority. Male issue (in the male line) being left, the estate
must go to them.†—Boudhāyana.

(a) By the term ‘son’ in the present age, is meant only the
Ourasa and Dattaka (sons).‡

Ourasa is the issue of the (uras, breast i. e.) body, and born of a

---


† Da T. Sans. p. 2; Da. bhā. Ch. IV. Sect. 2. para. 21; Coleb Dig. vol. II. p. 520.

‡ In jugas (yugas) or ages other than the Kali, there were twelve kinds of sons. These have been fully described and treated of in the chapter on adoption. q. v.

Among those twelve descriptions of sons, any other than the ourasa and dattaka, are forbidden in the Kali-age: thus the Aḍītya-purāṇa, after citing—‘The filiation of any but the dattaka and ourasa is not admitted; and also the marriage of regenerate men (i.e. Brāhmaṇa, Kshatriya, and Vaiśya) with girls of unequal class;” and other parts of the law, proceeds—‘these practices have been abrogated by the high minded sages, with an intent of securing mankind from evil. The ordinances of Śāhous are of equal authority with the Vedas.’—‘Śāhous,’ that is men free from all defects. See the Udātha-tattwa. See also Coleb. Dig. Vol. III, pp. 141, 142, 271, 272 & 288.

The marriage of a Śūdra with a woman of another caste has been prohibited by Manu himself:—‘For a Śūdra is ordained a wife of his own class, and no other: and if hundred sons be born of her, they shall have equal shares.’—Ch. IX. ss. 157.

These practices are enjoined by the Vedas, but they are forbidden or abrogated by the authority of Śāhous. That authority is admitted to be equal to the Vedas, and is therefore superior to all other authorities. It follows that if by the authority of Śāhous, such observance and practice be again sanctioned, their legality will be restored. Thus Manu:

‘Know the system of duties, which is revered and observed by such as are learned in the Vedas, virtuous, and ever exempt from hatred and inordinate affection, and which is im-
VYVASTHĀ-DARPANA

(patrī) wife legally married. Thus Manu:—"Him, whom a man begets on his own wife legally married, let him know to be the Oursas e son: first in rank."—(Ch. 9, v. 186). Oursas, however, is of two kinds—I. Born of a wife of equal class, and, II. Born of a wife of unequal class. But in the Kali (present) age the marriage with a damsel of unequal class having been prohibited, (see the preceding notes,) and consequently the son born of such a wife not being entitled to inherit, by the term "Oursas" we must now understand only the son begotten by the man himself on his legally married wife of equal class. Raghunandana, it is clear, has quoted in his Udbāha-tattva, only Voudhāyana's text:—"A son who was begotten by a man on his weded wife of equal class, let him know to be Oursa (son),"—because he found it expressive of the son who is now considered Oursa. He who is given (in adoption) by his mother with her husband's consent, or by his father, or by both, to a person of the same class, is his Dattaka or son given. This will be fully described in the chapter treating of adoption.

If there be a Dattaka son, adopted before the birth of the Oursas son, the former will inherit with the latter. The extent of the Dattaka's share in such case, and the other particulars regarding him, will be found in the chapter treating of adoption.

e.

pressed on the heart (as the means of bestitude). The Scripture, the Codes of Law, the practice (approved) of the good, and the satisfaction of the conscience; the wise have openly declared virtue to be of these four descriptions."—Ch. II. vv. 2 & 12.

Further, a custom continuously observed for several generations, and not repugnant to the Vedas, has the force of law, thus Manu:—"A king who knows the revealed law, must enquire into the particular laws of tribes, the laws (or usages) of districts, the rules of the classes (of traders, and the like), the customs of certain families, and shall establish their peculiar laws, (if they be not repugnant to the Vedas.)"—Ch. VIII., v. 41.

So the usage of a country, &c., established by agreement of the people must also be observed, provided such usage be not opposed to the Vedas and the codes of law. Thus Jnātavāleta:—"The usage or practice which has its origin in the general agreement of the people, should be carefully observed, as well as that which is established by the king; provided such usage be not opposed to one's own dharma" (v. 188).

Ṛṣigna (may): "whatever be the custom of a country, tribe, or nation, body of people or village, let that be followed, and let the partition of heritage be made in conformity therewith."—Kāṭtāyana.
Vyavastha’ 9. If there be many sons, they inherit equally.

**Authority.** After the death (o) of the father and mother, the brothers being assembled, may equally (k) divide the paternal estate, for they are not owners while they (the parents) live—*Manu*, Ch. IX. v. 104.

(o) “After death” that is after the extinction of right.—*Śrī-krishna’s* comment on the Dāya-bhāga.

Vyavastha’ 10. (k) Here the term “equally” indicates that their title is equal; that is, a deduction of a twentieth part, &c, is allowed by other brothers, through affection and to preserve due respect, because elder brothers are venerable: such deduction concerns, however, 

---

*Raghu-nandana* in his *Shuddhi-tattva* quotes the following text of *Jāntavyalkya*:

“Even a son begotten by a Śādra on a female slave may take a share by the father’s choice, but if the father be dead, the brethren should make him partaker of the moiety of a share: and one who has no brothers may inherit the whole property, in default of a daughter’s son.”

He then adds the comment: “The rule laid down in the above text of *Jāntavyalkya* is observed only among the Śādras, not by the other castes; and he thus admits the heritable right of the son so begotten.” Such practice, however, being confined in fact to the very inferior tribes of Śādrus, the text (of *Jāntavyalkya*) can be considered to apply to them only.—See the chapter on Adoption.

The description of the different kinds of slaves, male and female, is given in the section treating of debts. q. v.

*Parāsara* in his *Sanghitā* (Institutes,) the precepts of which are said to be intended for the Kali age only, authorises the adoption of the son made (Krīrīma) as well as of the given son (*Dattaka*) and out of the twelve descriptions of sons, he declares the *Ovraha*, *Dattaka*, and *Krīrīma* alone entitled to inherit. The practice of adopting the *Krīrīma* son, however, does not prevail in Bengal.

---


Sir William Macnaughten (and he is followed by Mr. Elberling: see his treatise on inheritance &c. p. 69, Sect. 156,) treats of the sons’ succession in these terms: “According to the Hindu law of inheritance, as it at present exists, all legitimate sons, living in a state of union with their father at the time of his death, succeed equally to his property, real and
the elder brothers who are endowed with virtue. But as persons of the present day entertain not great veneration (for their elder brothers,) and as elder brothers deserving of deducted allotments are (now) rare, equal distribution is alone seen in the world. Among the śādras no deduction is allowed to the eldest or an elder brother.†

Bhoirab-chander Roy versus Rasa-maņi.

Cases bearing on the Vyāvasthās Nos. 8, 9, 10.

I. Rám-chánd Roy with his three brothers,—Bhoirab-chander, Tilak-chander, and Hara-chander,—succeeded jointly at the demise of their father to the Zemindaree left by him. Subsequently Rám-chánd died childless, leaving his widow Rasa-maņi, who instituted the present suit for her husband’s share, which was alleged to be one-sixteenth by right of primogeniture, and a fourth of the remainder. Held that the estate should be divided equally, and that the plaintiff receive four sixteenths;—the first born or an elder brother having no claim to a greater portion on the ground of priority of birth.—18th of September 1799. S. D. A. B. Vol. 1. p. 27.

II. In the case of Ishwar-chander Kárfarmá and others versus Gobinda-chander Kárfarmá and others, it was determined by the (late) Supreme Court, that the seven sons, who survived their father Golak Chander, were entitled to his real and personal estate, of which he was seized and possessed at the time of his death; and that the said seven sons were so entitled in equal parts or shares.—S. C. January 1823. Cons. H. L. pp. 74, 75.

personal, ancestral and acquired" (vol. I. p. 17.) This, however, is not quite correct, because;—firstly, the Dattaka is also held to be a legitimate son, but he does not succeed equally with the Ovrasa son of his adoptive father; secondly, the sons succeed, as heirs to the patrimony not only at the time of their father’s natural death, but also at the time of his civil death and voluntary abandonment, (ante, p. 9); thirdly, the circumstances of a son living separate from his father, does not exclude him from the heritage where he has not already received his portion or somewhat in lieu or satisfaction thereof. Thus much is apparent from a precedent quoted by the learned compiler himself. See his work on Hindu law, Vol. 1. p. 2, & Vol. 11, page 5.

III. In the case of Táliwar Singh versus Pahalwán Singh (Sudder Dewanny Adawlut Reports, vol. III. p. 203) a claim of primo-geniture being preferred, it was determined that priority of birth does not entitle to a larger portion.—Macn. H. L. vol. I. p. 17.

Vyavastha. 11. Although the sons be by different mothers, and the number by each be unequal, still they shall equally inherit the paternal estate, the distribution being made per capita, and not per stirpes.*

Example. If there be two sons by one mother and six by another, still each son will inherit a one-eighth share.—Vide Cons. H. L. p. 5 & Macn. H. L. Vol. II. p. 17.

Vyavastha. 12. But if there be a kuláchár, i.e. usage in the family continuously observed for many generations, that constitutes an exception to the general rule of the law. The sons may deduct in the first place unequal portions (as the eldest one-20th, the middle-most, one-40th, and so on; see partition;) and then divide the residue equally; or the estate may be divided according to the number of the wives (of the former owner,) without reference to the number of the sons borne by each, (a distribution technically termed Pánti-bíhága;) or the eldest or other brother qualified may singly take the landed estate. See the Section treating of usage and custom.

* There is another decision on record (S. D. A. vol. II. p. 116) of a case in which there were sons by different wives, and one party claimed that the estate should be distributed according to the number of wives, without reference to the number of sons borne by each, (a distribution technically termed panti-bikága,) avering that such had been the kuláchár, or (immemorial) usage of the family; but the court determined that the distribution among them should be made, not with reference to the mothers, but with reference to the number of sons: being of opinion, that although, in cases of inheritance, kuláchár, or family usage, has the prescriptive force of law, yet, to establish kuláchár, it is necessary that the usage have been ancient and invariable. See also the case of Shek-bakhsh Singh versus the heirs of Futteh Singh, vol. II. page 283; And Elem. (i.e. Strange's) Hln. Law, App. page 288.—Macn. H. L. vol. I. p. 17.
Vyavastha 18. With respect to a rāj or principality,* the general custom has been to preserve it entire. The eldest succeeds unless he be unfit, when the next qualified brother would inherit: in any case the succession is single.

Authority. This appears from the words of Bālmiki put in to the mouth of Manthaka, when addressing Koike:—
“Charming (queen)! it is not that all the sons of a king enjoy the kingdom: one amongst many sons is invested with the rāj, (for) if all the sons be in (possession of) the rāj, great disorder shall ensue; therefore, spotless beauty! kings give their kingdoms (respectively) to their eldest, or some other well qualified of their sons; which eldest sons (respectively) deliver their kingdoms entire to their eldest sons, not to their own brethren. Thus, your son shall not have much reverence, but as a helpless one, shall be destitute of enjoyment, nor shall he be longer reckon a member of the ever-enduring royal race.”—Rāmāyana, Ajodhýa-kãyda.

Vyavastha 14. Even now it is seen in practice, that entire kingdoms are severally held by one prince, although he have brothers.*—Vide Coleb. Dig. Vol. II. p. 119 et seq.

Vyavastha 15. In default† of the son, the son’s son takes the inheritance; failing him, the great-grandson‡.

* In the succession of principalities and large landed possessions, long established kulaçchar will have the effect of law, and convey the property to one son to the exclusion of the rest. It has been stated by Mr. Colebrooke, in a note to the Digest (vol. II. p. 119) that the great possessions called zemin-tárees in official language, are considered by modern Hindu lawyers as tributary principalities.—Macn. H. L. vol. I. p. 18. Note.

† The expressions default and death embrace all the circumstances which cause extinction of right. See ante p. 9.

Vyavastha 16. The grandson whose father is dead, and the great-grandson, whose father and grandfather are dead, are entitled to inherit equally with the (late proprietor's surviving) son;* for they equally confer benefits on the deceased by presentation of the oblation-cake at the Párvana Shraddha.†

Vyavastha 17. But the grandson and great-grandson, whose fathers are living, are not entitled to inherit;‡ since they do not confer benefit by presentation of the oblation-cake at the parva.§

Authority. As in virtue of his offering the oblation-cake at the parva,† the son becomes entitled to inherit his father’s estate, so are his (the son’s) sons, on the extinction of his right (by death &c., p. 9) in like manner entitled to inherit (notwithstanding the existence of their paternal uncle,) whatever portion of the grandfather’s estate was their father’s right; for Kátyávana (quoted in Bántákara) expressly says:—“Should a son die before partition, his son shall be made a partaker of the estate, provided he had not received from his grandfather property sufficient for his support. He shall receive his father’s share from his uncle or his uncle’s son; and the same (proportionate) share shall be according to law allotted to all the brothers; or, (if that grandson be also dead) let his son take the share;

---


† Párvana Shraddha is the offering of a double set of oblations at the parva, viz. three cakes to the father, paternal grandfather, and great-grandfather, and three to the maternal grandfather, his father and grandfather; and the remnants of each set to the three remoter ancestors of each line.


§ “The fourteenth and eighth days of each half lunar month, the full moon and new moon, also the time of the son’s entering on a new social sign, these, O great king, are (called) parva.”—Shraddha-tattva.
beyond him (i.e. great-grandson, lineal succession) stops.* If there be many sons of the deceased (son), their father’s share only (and no more) should be subdivided and allotted amongst them. But if the father be living, the sons are not entitled to get shares, by reason of their having no right to perform the pārvana Shrāddha. In like manner, on the extinction of right of the (late) owner’s grandson, his (the latter’s) share only shall be taken by his sons (the great-grandsons of the late owner).—Dāya-tattva, Sams. pp. 11 & 51. Thus:

Vyavasthā. 18. The grandson and great-grandsons inherit per stirpes, and not per capita.† See Partition.

Sri-nāth Sharmā versus Rādhā-kānta.

Cases bearing on the Vyavasthā Nos. 15, 16, 18.

I. Braja-nāth had 8 sons; (of whom) Kāshi-nāth the eldest, Sadā-shīb the second, and Kheḷā-rām the seventh sons died without issue; but the widow of the seventh son was still living. The eighth son Kevaḷ-rām was the only son adopted into another family (and consequently excluded from paternal inheritance). Adjudged that the state should be divided into five equal shares; that the heirs of each four sons, who left issue, should receive one share; and that the widow of the seventh son of Braja-nāth should receive her husband’s (one) share,—viz: Rādhā-kānta, Mohan-kānta, and Ballabhi-kānta, sons of Nīl-maṇi, and grandsons of Rām-nāth, the third son of Braja-nāth, jointly receive one share; Badan-chānd, son of Madhu-rām, and grandson of Dharnī-

---

* See Coleb. Dig. Vol. III. pp. 7, 8, 92; and Sri-kriṣṇa’s commentary on the Dāya-bhāṣya, Sams. pp. 77, 78.

dhar, and Gopál-prasád, the surviving son of Dharaní-dhar, who is the fourth son of Braja-náth, jointly receive one share; Sri-náth son of Dná-náth the fifth son of Braja-náth, receive one share; and Gokul-náth, as adopted son and heir of Boidya-náth, the sixth son of Braja-náth, receive one share.—24th of November, 1796. S. D.

Joy-náráyaṇ Mallik versus Bishwambhar Mallik.

11. Rádhá-charaṇ died (intestate) leaving four sons. viz. Hala-dhar, Bishwambhar, Gobardhan and Joy-náráyaṇ. Golak-chander was another of Rádhá-charaṇ’s sons, but he died in the life-time of his father, leaving Rám-dhan and Raja-mohan his sons surviving him. Hala-dhar survived his father, and died leaving Rám-náráyaṇ his son. The property of Rádhá-charaṇ and the increase of that property were ordered to be equally divided among his sons and their representatives, viz. it was ordered that Bishwambhar, Gobardhan, and Joy-náráyaṇ, the surviving sons of Rádhá-charaṇ each take per capita; Rám-náráyaṇ the only son of Hala-dhar take a share in right of his father; and Rám-dhan and Braja-mohan, the two sons of Golak-chander, take per stirpes his share between them.—S. C. Cons. H. L. pp. 50,51.

ON SUCCESSION TO THE ESTATE OF ONE WHO LEAVES NO SON (g).

Vyavastha. 19. In default of the son, (and in the male line of the) grandson and great-grandson, the widow (of the late owner) succeeds to the estate.*

Authority. I. "The wife and daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow-student: on failure of the first of these, the next in order is the heir to the estate of one who departed for heaven (j) leaving no son (g). This rule extends to all classes."—Jāṇyavalkya. Thus affirming the right of the last mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.—Coleb. Dāya-bhāga. p. 160 § 4.

(g) The term "Son" extends to the great-grandson:† and that "Leaving no son" implies failure of the son, son’s son and great-grandson (in the male line); for these are equally givers of oblations at the parva. And it is for this reason that Voudháyana, having previously referred to the son, grandson, and great-grandson, says:—"Male issue (as far as the third degree) in the male line being left, the estate must go to them."—See Dé. T. Sans. p. 49.

(j) "Departed for heaven" i. e. dead; which indicates also degraded or fallen from sin, and the rest (ante, p. 9). Sri-krisṇa’s comment on the Dāya-bhāga. Sans. p. 168.


Authority. 11. "The wealth of him, who leaves no son, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them, it descends to the brother's sons; if none exist, it passes to the kinsmen (bandhu); in their default, it devolves on distant kinsmen (sakula); failing them, it belongs to the pupil; on failure of him, it comes to the fellow-student: and for want of all those heirs, the property escheats to the king, excepting that of a Bárkmā.”


Authority. III. "The widow of a son-less man keeping unsullied her husband's bed (t), and persevering in religious observances (d) shall present to him the oblation-cake, and obtain (his) entire share (n). Vihaṭ-Manu.—Ibid. p. 161.

(t). "Keeping unsullied her husband's bed"—not allowing any other man to have access to her husband's bed: that is, chaste.—Sri-krishna's commentary on the Dāya-bhāga, Sana. p. 167.

(d) "Persevering in religious observances," that is devoted to the performance of religious acts beneficial to her husband's soul in the next world.—Ibid. p. 169.

All these are specified in detail by Jīmēṭa-vāhana in the following passage: "On failure of the heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood (and not like them from the moment of their birth) succeeds to the estate in their default. Thus Vyāsa says: 'After the death of her husband, let a virtuous woman observe the duty of continence and let her daily, after the purification of the bath, present, from the joined palms of her hand, water mixed with til (sesamum) to the manes of her husband. Let her day by day perform with devotion the worship of the Gods, and the adoration of Vishnū, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman who is assiduous in the performance of duties conveys her husband, though abiding in another world, and herself (to a region of bliss)." Since by these and other passages it is declared, that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to
VYAVASTHA-DARPANA

all (to a region of horror;) for they share the fruits of virtue and vice; therefore, the property devolving on her is for the benefit of the former owner: and the wife’s succession is consequently proper.”—Coleb. Déd, 14d Ch. XI. Sect. I. p. 174, paras. 43,44.

The author of the Viśāda-bhagārṇava puts this question “Since a woman has not yet performed the duties of widowhood and the like, how can she have a title to inheritance immediately after the death of her husband?” and himself answers it, thus: “She has an immediate title, because she is disposed to perform those duties; but afterwards if her propensities happen to change, she forfeits the right which she had fully possessed.”* In Hárīta’s text (“A woman widowed and young is untractable; but separate property must always be given to women, that they pass their destined life,”) young is mentioned as indicating the possibility of adultery. By youth that age is not strictly meant, for, a woman, though young, who is known to be well-disposed, has the right of inheritance by universal consent. By the term ‘untractable’ is suggested the neglect of the duties of widowhood.†—See Coleb. Dig. Vol. III. p. 479.

* This, however, is not quite correct, for, the heritable right once vested in a woman is not divested unless she commit such an act or acts of impiety or immorality as to cause her degradation or excommunication by loss of caste.—See the chapter on exclusion from inheritance.

† The duties of widowhood are also prescribed in the following texts:—

“Let her emaciate her body, by living voluntarily on pure flowers, roots and fruits; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and practising the incomparable rules of virtue, which have been followed by such women as were devoted to one only husband. Many thousands of Brāhmaṇas having avoided sensuality from their early youth, and having left no issue in their families, have ascended (nevertheless) to heaven. And like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity. But a widow who, from a wish to bear children, slights her (deceased) husband (by marrying again,) brings disgrace on herself here below, and shall be excluded from the seat of her lord.”—Manu. Ch. V.

“Let her continue, as long as she lives, performing austere duties, avoiding every sensual pleasure, and cheerfully practising those rules of virtue which have been followed by such women as were devoted to one (only husband.) Neither in the Vedas, nor in the usual code, is religious seclusion allowed to a woman: her own duties, practised with a husband of equal class, are indeed her religious rites: this is the settled rule. Eighty-eight thousand holy sages of the sacerdotal class, superior to sensual appetites, and having left no male issue, have ascended (nevertheless) to heaven. Like them, a damsel, becoming
The phrase 'obtain entire share' means that the wife shall obtain her husband's entire share, not that she shall obtain her own entire share.—Coleb. Dá. bhá. Ch. XI. Sect. I. p. 161, para. 8.

'Entire share'—that is, the whole share of her husband, and not a portion adequate to her maintenance.—Dá. T. Sans. p. 58.

**Authority.** III. "In the *Veda*,* and in the code for law, † as well as in popular usage, ‡ a wife is declared by the wise to be half the body (of her husband,) equally sharing the fruit of pure and impure acts. Of him, whose wife is not dead, half the

---

a widow, and devoting herself to pious austerity, shall attain heaven though she have no son; this, *Manu*, sprung from the Self-existent, has declared."—Yama.

"After the death of her husband, a wife must practise austerities, or ascend (the pile) after him."—Vishnu.

"Leaving her husband's favourite abode, keeping her tongue, hands, feet and (other) organs in subjection, strict in her conduct, all day mourning her husband, with harsh duties, devotion, and fasts to the end of her life, a widow victoriously gains her husband's abode, and repeatedly acquires the same mansion with her lord, as is thus declared: That faithful woman who practises harsh duties after the death of her lord, cancels all her sins, and acquires the same mansion with her lord."—Kárta.

"A wife is considered as half the body of her husband, equally sharing the fruit of pure and impure acts: whether she ascend (the pile) after him or survive for the benefit of her husband, she is a faithful wife. Strict in austerities and rigid devotion, firm in avoiding sensuality, and ever patient and liberal, a widow attains heaven, even though she have no son,"—Vrishapati.

"Only one meal each day should ever be made (by a widow,) not a second repeat by any means; and a widowed woman, sleeping on a bedstead, would cause her husband to fall (from a region of joy.) She must not again use perfumed substances: but daily make offerings for her husband, with *kusa*-grass, *tīl*, and water. In the months of *Vrishākha*, *Kārtika*, and *Māgha*, let her observe special fasts, perform ablutions, make gifts, travel to places of pilgrimage, and repeatedly utter the name of *Vishnu*."—Sarīti.

"Though her husband die guilty of many crimes, if she remain ever firm in virtuous conduct, obsequiously, honouring her spiritual parents, and devoting herself to pious austerity after the death of her husband, that faithful widow is exalted to heaven, as equal in virtue to *Arundhati*."—Kátyáyana. See Coleb. Dig. Vol. II. pp. 460—465.

* "The wife is half the person (of her husband.)"—*Veda*.
† "Of him, whose wife drinks wine, half the body is polluted."—Prāyashchitta-vicēka.
‡ "Popular usage," i. e. the moral science: the works of *Ushana* and others.
body survives. How then should another take his property while half his person is alive? Let the patni of a deceased man, who left no son, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother be present. Dying before her husband, the pativrata (p) and sādhvī (b) wife partakes of his consecrated fire; or, if her husband die (before her, she takes) his wealth: this is the primeval law. Having taken his movable and immovable property, the precious and the base metals, the grain, the liquids, and cloths, let her perform the monthly, and the sixth monthly shraddhās,* and so forth.

(m) With presents offered to his manes, and by pious liberality let her honor the paternal uncle of her husband, his spiritual parents, and daughter’s sons, the children of his sisters, his maternal uncles, and also the old and unprotected persons, guests, and females (of the family.) Those near or distant kinsmen who become her adversaries or who injure her property, let the king chastise by inflicting on them the punishment of robbery.”†—Vr̥ṣapaṭi.

* “Let her perform the shraddhās in each month, and in the sixth, and so forth;” the text should be so supplied. The Pārvasya or double (properly, triple) set of oblations must not be offered, because women are forbidden to perform this rite. By the word “month” are suggested the shraddhās offered in twelve successive months; by the term “sixth” are suggested two shraddhās celebrated the day before the expiration of each of the two sixth months of the year; the term “and so forth” includes the first and the anniversary shraddhās to be performed yearly; hence she must celebrate no other obsequies.”—Cœlab. Dig. Vol. III. p. 450.


If the wife be half the body of her husband, may she not exclusively take his wealth, although sons, or other male descendants be living? No; for, the Scripture says: “It is a person’s own soul which is born to him (or her) as a son.” Manu also says: “The husband, after conception by his wife, becomes himself an embryo, and is born a second time here below; for which reason the wife is called jīvate, since by her he is born (jīvate) again. (Ch. IX. v. 2.) So also say Sankha & Lekhita: “Let a priest take the hand of a woman equal in class; the bodies of his ancestors are born again of her. Let him figuratively address his own soul in the person of his son: ‘Sprang from the several limbs, (especially) from the breast, thou my soul art called son: mayest thou live for a hundred years! For the benefits conferred on parents, thou, my soul, art called son: because thou deliverest (traṇaye) from the hell called put, therefore thou art named (put-tra) son.” And it appears from these, that a son or other descendant is consubstantial with the father and other ancestor. (See Cœlab. Dig. Vol. III. p. 469.) Further, Manu and Viṇṇu say: “Since a son delivers (traṇaye) his father from the hell called put, therefore he is named put-tra by the Self-existent himself.” (Manu 2, 158; Viṇṇu 15, 45.) So says also Hāṃtra: “Certain hells are named put and chhina-tauta, a son is therefore called put-tra, because he delivers his
Vyavastha. 20. (b) 'Sādhwi' that is, not adulterous: hence the right of adulterous women ceases.—Sūra-krishna's commentary on the Dāya-bhāga. Sans. p. 167.

Authority. I. Let the widow succeed to her husband's estate, provided she be chaste.—Kātyāyana.

II. The wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who is addicted to adultery, does not deserve property.—Kātyāyana.

father from those regions of horror." In like manner Sankha and Likhita declare: "A father is exonerated in his life-time from the debt to his own ancestors, upon seeing the countenance of a living son: he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three vadas, and sacrifices rewarded with ample gratuities, have not the sixteenth part of the efficacy of the birth of an eldest son." Thus also Manu, Sankha, Likhita, Vishnu, Vashishtha and Harita: "By a son, a man conquers worlds; by a son's son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode."—Manu 9.1.37; Vashishtha 17.5. Vishnu 15. 45.) Jīghtavakra likewise says: "The continuance of race and attainment of heaven depend on a son, grandson and great-grandson (1.78)." (Vidg Coleb. Dāf. bhad. Ch. XI. Sect. 1, para. 31.) Thus since the sons and other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth, and they present the ablation-cake at the pārsha to their deceased father, the proprietary right of sons and the rest is ordained, as already inferable from reasoning; because the property devolving upon sons and the rest benefits the deceased, and since there can be no other purpose of speaking of the various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which Manu ascents, that the right of succession is grounded solely on the benefits conferred. It therefore clearly appears that the estate of the deceased should go first to the son, grandson, and great-grandson, and on failure of the son and the rest, the succession devolves on the widow: and this is reasonable.—See Coleb. Dāf. bhad. Ch. XI. Sect. 1. pp. 169-170, paras. 31, 32, 33,
III. Let the brothers allow maintenance to his (deceased's) women for life, provided these preserve unsullied the bed of their lord; but if they behave otherwise, the brethren may resume that allowance.—Nárada.

See the Chapter on exclusion from inheritance.

(m) The expressions “monthly” and “six monthly” are intended to prohibit the performance of the Párvana shráddha: and by the term “so forth” is meant the first shráddha and the other shráddhas made within the year.—Sri-Krishna's commentary on the Dáya-bhága. p. 167.

There are texts of sages which are opposed to the widow's right of successions immediately in default of the son, grandson, and great-grandson; others deny her right to succeed at all. But Jímúta-váhana, the founder of the Bengal doctrine, argues in refutation of them, and quotes the texts of Vrihaspati, given above, as paramount and decisive authority, and then concludes by laying down, as established law, the right of the widow where there is no male issue:—Thus, “By these seven texts Vrihaspati having declared, that the whole wealth of the deceased man, who had no male issue, as well the immovable as the movable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, (daughters,) daughter's sons, and other heirs; and having directed that any of them who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers by the king, totally denies the right of the father, the brothers, and the rest, to inherit the estate if a widow remain.”—See Coleb. Dá. Íhá. Ch. XI. Sect. 1, para. 3.

The doctrine of the schools other than that of Bengal is, that the widow is not entitled to succeed if her late husband was undivided, or having been separated (from his co-heirs) had become re-united. But Jímúta-váhana, the paramount authority of the Bengal school, after commenting on the text of Vrihat Manú, and refuting the arguments on which the doctrine of the other schools is founded, lays down, as established law, the result of his discussion, thus: “Therefore, the doctrine of Jitendriya, who affirms the right of the widow to inherit the whole property of her husband leaving no male issue, should, without at tension to the circumstance of his being separated from his co-heirs
or re-united with them, (for no such distinction is specified,) be respected."—Coles. Dig. bhd, Ch. XI. Sect. 1, p.175, para. 46. Such is also the opinion of Raghunandana and other compilers of law of the Bengal School, who are in fact followers of Jimuta-vadhana.

Kashi-prasad Roy and others—versus—Digambar Roy.

I. Digambar Roy, son of Krishna-deb Roy, sued the sons of his eldest brother Kashi-nath Roy for his share in the joint estate. After the pleadings had been filed by the parties, a claim was set up by Muns. Gour-mangi, widow of Raja-chander Roy, another son of Krishna-deb Roy, for her husband’s share of the undivided ancestral estate. Determined that the ancestral estate of Krishna-deb Roy should be divided into three shares, whereof Muns. Gour-mangi in right of her succession to Raja-chander Roy, the heirs of Kashi-nath, and the respondent Digambar Roy, should each receive one share.—28th of May 1817, S. D. A. Rep. Vol. II. p. 237.

Hem-latia Deb versus Golak-chander Gosain.

II. Brindaban-chander left two sons—Kripnanda and Brajananda. The latter died leaving a widow, named Dokouri, and two minor children,—a son (named Gobinda-chander) and a daughter, both of whom died before their mother, Kripnanda died leaving two sons—Mahananda-gosain, husband of the plaintiff, and the defendant Golak-chander, both of whom survived the widow of their uncle Brajananda. After the death of the widow of Brajananda, the brothers Mahananda and Golak-chander held joint possession of the ancestral estate.

The Pandit of the Sudder Dewanny Adawlut being referred to, replied "that on the death of Brajananda his estate devolved on his son Gobinda-chander, that on the death of the latter, without son, son’s son, and son’s son’s son, wife, daughter, daughter’s son, and father, his share of the property would fall in to his mother Dokouri;—that under the circumstances stated, Dokouri had no power to alienate the property, which, after her death, would go to her husband’s heirs (Mahananda and Golak-chander,) and that Hem-latia Deb the widow of Mahananda succeeded to her husband’s estate.” Under this Vyavastha-Darpana.

* See Coleb. Dig. vol. III. p. 485.
vyavastha-darpana

The court gave judgment in favor of the plaintiff (Hem-lata) as heiress to her husband, who was shown by the Puṣḍit’s exposition of the law, to have been joint heir with his brother (Golak-chander) of Brajñandña’s share of the ancestral property on the death of his widow Dokauri.—1st of July 1842. S. D. A. Rep. Vol. VII. p. 108.

III. Lāl-bhārī Dhar died leaving a widow, the defendant, and a son, Choitan-charan Dhar. The son died, childless, leaving his widow the lessor of the plaintiff, (i.e. the real plaintiff,) whose title is the subject of the suit. The defendants set up a verbal last will of Lāl-bhārī Dhar, which is proved by one witness: two other witnesses tendered are rejected, because they claim to be legatees under the alleged will. In reply, declarations inconsistent with, and subsequent to, the date of the will by Lāl-bhārī Dhar just before his decease, are proved.

This action was tried on the 11th, 12th, and 14th April, before a full court, and was then adjourned in order to obtain the opinions of puṣḍits upon the following case:

Jagyna-datta, a married Hindu, dies, leaving a married son, named Deva-datta. The son takes possession of the property. After two years, the son dies, leaving a widow, but no issue. Is the widow of Jagyna-datta entitled to any part of it?

Of the puṣḍits, Gobardhan-kamal Sharmá declared the defendant, i.e. the mother of plaintiff’s husband, entitled to the property. The court, however, rejecting his Vyavastha, gave judgment for lessor of the plaintiff upon the Vyavastha of Rām-charan Sharmá, who having quoted for authority the vachanas or verses of Vṛhaspati, and the subsequent passage of Jhīmāta-vāhana’s Dāya-bhāga, and Jāgnyavalkya and part of the verses of Viśnu, and Kurakā Bhutta’s comments on Manu, delivered his opinion, saying “according to the Vyavastārṇava by Raṅku-nātha sārvabhouma, and according to Dāya-tattva of Raṅgu-nandana Smārtta Bhattāchārīya, and according to the Vivāda-ratnakara by Chandeshvara, and according to the Vivāda-chintāmani by Vṛhaspati Miśra, and according to the comments on Manu by Kurakā Bhutta, and according to the Mitākṣhara by Bhattāraka Parama-hansa, and other authorities in use, I have given my opinion.”—S. C. Chamber’s Notes, April 11, 12, 14, July 11, and Nov. 18, 1794.—Montriot’s Cases of the Hindu law. p. 858.
Radha-maṇi Debi versus Shām-chander and Rudra-chander.

IV. A childless widow sued her husband’s brothers for her husband’s share; and they pleaded that their deceased brother made over his landed property to them, before he died; and that the plaintiff was only entitled to maintenance. The court required an opinion from their pandits,—whether, supposing the husband of the claimant to have executed the conveyance (termed Satva-tyāga-patra) set up by respondents, during severe illness whereof he died four days after, it was good in law? The pandits replied that “severe illness did not prevent the validity of a gift of property movable or immovable; if the person executing it were of sound mind at the time, the gift was valid; if he were not of sound mind at the time, it would not avail.” The deed was rejected on failure of proof of this point, and judgment passed in favor of the widow, as heir to her husband’s estate, revertible at her demise to the husband’s next heirs.—27th of September 1804. S. D. A. R. Vol. I. p. 85.

V. In the case of Rāj-kishore Sett versus Srimati Tanu-maṇi Raur and another, the Supreme Court at first made a mistake in attempting to restrict the widow of an undivided brother (in Bengal) to maintenance: but ultimately declared her entitled to enjoyment of her husband’s share.—Montrιou’s Cases of the Hindu law. p. 413.


Radha-maṇi Raur versus Nīl-maṇi Dās.

Case bearing on the Vyavasthā No. 20.

Gour-hari Dās and his elder brother, the defendant, inherited land from their father, and were, with their mother and sisters, an undivided family, Gour Hari died without issue: his widow, the lessor of the plaintiff, brought this action for an undivided half share of the family houses and land, which were in Calcutta. The mother, being called by the lessor of the plaintiff, proved, on cross examination, that the latter had, after her husband’s death, been incontinent, and long since voluntarily quitted the house and protection of her husband’s family. She was, at the time of the action, living with her own father and brothers.
The court (present, Chambers, C. J. Hyde, Jones, and Dunkin, Js.) being of opinion, that the lessor of the plaintiff had, under Hindu law, forfeited, by her incontinence, her right to her husband’s estate, nonsuited her.—S. C. Montriou’s Cases of the Hindu law, pp. 314,315.

See also the case of Gokul-chander Chakrabarti versus Rāj Rāyi and Jogopāl Choudhuri.—S. D. A. R. Vol. II. p. 167.

Legal opinions delivered in, and admitted by, the several courts of judicature, and examined and approved of by Sir William Macnaghten.

Question.—A childless Brāhmaṇ dies, leaving his mother and a widow him surviving. According to the law of inheritance, to which of these survivors does his property real and personal belong? What is the rule of succession, in case of the mother and widow’s living together in a joint state, and what is the rule if they are divided?

A widow succeeds to her husband’s property to the exclusion of his mother.

Reply.—On failure of a son, grandson, and great-grandson, the widow has the proprietory right to her husband’s estate; and this is the rule, whether the mother lives jointly or separately. She cannot in any case have a right to the succession while there is her son’s widow. This opinion is conformable to law.—Zillah Chittagong, May 22nd, 1817. Macn. H. L. Vol. II. Ch. I. Sect. 2, case 1, (p. 18.)

Q. A person dies, leaving a widow and a brother of the whole blood. According to law, does his property appertain to his widow, or should it devolve on the brother, he furnishing the widow of his deceased brother with maintenance?

In Bengal, a widow excludes a brother.

R. On failure of heirs down to the great-grandson, the widow, according to the law of Bengal, is entitled to enjoy her husband’s property during her life, whether consisting of lands or other property, and the brother has no right of succession while she survives.

Authorities:—Vṛihospati, Vṛihat Manu, Jānyavalkya and Vṛihat (ante, pp. 23, 24, 26.) This is delivered according to the doctrine of the Dāya-bhāga, &c.—Dacca Court of Appeal, August 19th, 1819. Ibid. Ch. I. Sect. 2, case 2 (p. 19).
Q. 1. A person died leaving his father, brother, widow, daughter, and daughter's son; in this case, in what proportions will these persons respectively be entitled to share the property which the deceased acquired?

R. 1. Supposing the deceased to have acquired the property without the use of his father's funds, and to have left his widow, daughter, daughter's son, father, and brother him surviving, his acquisitions should be made into four shares, two of which go to the father, and the remaining two the widow. Kātyāyana says: "A father takes either a double share, or a moiety, of his son's acquisitions of wealth. Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her, let the heirs take it." If the acquisition was made with the aid of the paternal property, and the acquirer be survived by the individuals above mentioned, the father would take a moiety of the goods acquired by his son, the acquirer's widow two shares, and his brother one share.

Q. 2. A person living in a state of union with his two brothers, acquired some property movable and immovable, with or without the use of the patrimony, and with the sanction of his father divided his own acquisitions and the paternal estate with his brothers. The partition was formally entered into, and documents were drawn out by each of the brothers. The brothers alluded to, died before his father; and then the father died. In this case, will the brother's daughter and daughter's son, take his property exclusively, or will his surviving brothers be entitled to any part of it?

R. 2. Under the circumstances stated, the widow is alone entitled to succeed her husband.

Q. 3. Supposing the brother alluded to, without the consent of his father, to have joined with his brothers in making a division of the patrimony and their respective acquisitions, to have made the division by executing formal deeds of partition, and to have died before his father, who made objections to the validity of those deeds; in this case, to which of those individuals, being his widow, daughter, daughter's son, and brothers (the father being dead,) will his property go?
R. 3. Under the circumstances stated, the brothers are entitled to that portion of the property which may be ascertained to be the ancestral estate; and of any property which may be proved to be the deceased's personal acquisitions made with the use of her funds, the brothers first take one moiety by right of their father, and out of the remaining half, the acquirer's widow be two shares, and the other brothers one each. If the property can acquired exclusively by the deceased brother, without any want to the patrimony, then, on the death of the father, the bro-must have a moiety of the acquisitions as their father's share, as acquirer's widow the residue.

4. Is a daughter, during her mother's lifetime, competent to or uncle for her father's property, by virtue of her right of sion?

R. 4. A daughter is not competent to bring an action against her paternal uncle, founded, on her right of inheritance to her father's property, while other exists.

5. A widow brought an action, claiming her late husband's ty, against his brothers, and afterwards executed a release, by nishing not only her own right and title, but that of the de.'s daughter and daughter's son, in favor of the brothers. In this is the daughter at liberty to bring an action against her mother uncle's for the share of the joint property which belonged to the sed father?

R. 5. Supposing the widow to have sued her husband's brothers for his legal share, and to have entered into a release, with an intention to defeat the right daughter and daughter's son, the daughter is competent to sue other and uncles to annul the transaction. It is prohibited by the widow to make an alienation of any property, excepting her theaculiar property, while the heirs exist.

such an alienation the hereditary means of maintenance would stroyed: "They who are born, and who are yet unbegotten, hey who are actually in the womb, all require the means of sup-
port; and dissipation of their hereditary maintenance is censured."
—Zillah Hooghly, July 8th, 1815. Macn. H. L. Vol. II. sect. 2, case 7, (p. 23—26.)

Q. A person, who had two sons, divided his whole property, consisting of assessed and rent-free lands and household goods, between them in equal portions, reserving nothing for himself; and at the same time it was conditioned, that for the remainder of his life he should reside for six months in the house of the elder son, and be supported by him, and for the other six months in that of the younger son, alternately. At the time when the partition was made, the father had no ready money, but, subsequently, some money was acquired by the elder son, with which a mercantile concern was carried on by the younger son, who had then acquired no property. The elder son died, leaving a widow and daughter; afterwards the father died before his younger son, and his elder son's widow and daughter. At the death of the elder son, his widow came in to the possession of her husband's share which he received at the partition; but on the death of the younger son, his widow ousted the widow of the elder son from her husband's share. In this case, to what proportion is the widow of the elder son entitled?

R. Of the two brothers who received the property at the partition made by the father, supposing the elder to have acquired some property, and to have died before his father and widow, in this case, his widow is entitled to the whole of that which her husband took on the partition, and her husband's acquisitions should be made into four parts, to two of which she is entitled, and the widow of the younger son has a right to the remainder.—Zillah Hooghly. Macn. H. L. Vol. II. sect. 2, case 13, (pp. 31, 32).

Q. A person died, leaving a widow and a brother of the half blood. Subsequently to his death, the widow violated the hitherto unsullied bed of her husband, and had a child by a paramour of another class, while the brother's conduct was consistent with his religion: in this case, which of the two is entitled to succeed to the property of the deceased? Supposing the widow during the lifetime of her husband to have cohabited with a stranger, and to have therefore been expelled from the family, and to have lost her reputation, has such widow any right to inherit her husband's property?
An unchaste widow forfeits all right to her husband's property. R. It is the general doctrine, that the virtuous widow of a man who dies leaving no heir down to the great-grandson, succeeds; but that if she, on the death of her lord, be faithless to his bed, she has no right of succession, consequently the widow in such case would be excluded by her husband's half-brother. So in the case of her having acted unchastely while her husband was living. The authorities for this opinion laid down in the Dāya-bhāga and other books of law are Vṛihapati, Kātyāyana, Vṛihat Manu & Nārada. (See ante, pp. 23, 24, 26.)—Zillah Hooghly. Macn. H. L. Vol. II. Sect. 2, case 3, (pp. 19,20).

Q. There were two brothers, of whom one died, leaving sons who are still alive, and the other died leaving a son, who also died, leaving a widow him surviving. The widow had become a prostitute, and had violated her husband's bed. In this case, is she entitled to inherit her husband's estate, and if not, on whom does his property devolve?

And may be expelled from his house. R. If it be proved that the widow in fact did not keep her husband's bed unsullied, she has no title to his property, and ought to be expelled from his house. His estate, in default of heirs down to the uncle, should devolve on his uncle's sons. This opinion is in conformity to the authority contained in the Dāya-bhāga, &c.—Zillah 24 Pergunnahs. July 18th, 1811, Macn. H. L. Vol. II. sect. 2, case 4, (p. 21).

Vyavastha. 21. The widow as heir to her husband takes such property as he possessed or was entitled to when he died: but she does not represent her husband in respect of succession to an estate which would have devolved upon her husband had he outlived its owner.

Rāini-bhavāni Debi and Rāini-Mahā-māyā Debi, Appellants, versus Rāini-sārja-māni Debi.

Case bearing on the Vyavastha No. 21. A Hindu died leaving four sons: the first and second of whom died childless, leaving their widows; the third died leaving neither a widow nor an issue; and the fourth lost his title to inheritance by being adopted into another family. The widows of the first and second brothers claimed their husband's share together with that of their husband's brother in the
joint estate; though they did not demand separate possession of the same during sixteen years, but allowed them to remain with other parts of the estate, under the general control and management of another of the sharers (a member of the family) and received provision in land for their expenses. Held that as the appellants did not separate themselves from the managing sharer or consent to relinquish the share of their husbands, the circumstance of their (appellants') having suffered the claim to remain unagitated does not involve forfeiture of their share in the joint estate, though it is held by their kinsman for sixteen years: the widows, however, are entitled to succeed to the shares of their husbands respectively, and not to the share of their husband's brother; because he survived their husbands, and consequently his share devolved on his legal heirs.—12th May, 1806. S. D. A. Rep. Vol. I. page 185.

Admitted legal opinion approved of by Sir William Macnaghten.

Q. Of three landed proprietors, two died, each leaving a widow, and the third died leaving two sons, him surviving. The widows and the two sons of the last deceased jointly possessed the ancestral landed estate. Subsequently the widow of the eldest brother died; then the eldest son of the third brother, leaving a widow and his brother, who subsequently died unmarried. Lastly, the widow of the second brother died. There are now surviving only the widow of the third brother's son, and a descendant in the fifth degree of her husband's paternal line. Under these circumstances, according to law, which of these two survivors is entitled to the landed estate?

R. Under the circumstances above stated, the surviving widow has no title to inherit from her sapindas or the persons who partake of undivided oblations.

Authorities laid down in the Dáya-bhága.—Boudháyana, after premising, "A woman is entitled," &c. proceeds, "not to the heritage, for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit." By the mention of "not to the heritage" is understood that a woman is declared incompetent to succeed her sapindas and the like. The sapinda of the fifth degree is entitled to the succession. To this effect is the text of Manu contained in the Dáya-bhága: "To the nearest kinsman (sapinda) the inheri-
VYAVASTHĀ-DARPANA

KULLĪKA-BHATTĀ thus comments on the above passage: “Of the Sapindas, whosoever becomes nearest is entitled to the inheritance.” The term (sapinda) extend to the seventh person or the sixth degree of ascent or descent. So also the text of ṪheManu cited in the same authority. Now the relation of the sapindas, or men connected by the funeral cake, ceases with the seventh person, or in the sixth degree of ascent or descent;* and that of Sāmanodakas, or those connected by an equal oblation of water, ends only when their births and family names are no longer known.

The Sapindas are entitled to the succession of their Sapindas by reason of conferring benefits on them by presenting oblations to their, manes, but not their wives.† This is conformable to the Dāya-bhāga Dāya-tattva, Dāya-krama-sangraha, and other authorities.

Zillah Mymunsing.—Macn. H. L. Vol II. Ch. I. Sect. 2, case 11. (pp. 29, 30).

* The above vyavasthā is conformable to the Dāya-bhāga and the other authorities cited, but not so the definition of Sapinda. See Coleb. Dā. bhā. Ch. xi. Sect. 1. para. 37.

† Although the widow of the third brother’s son is entirely excluded from inheriting the property left by his uncle’s widow, yet of the estate enjoyed by the three brothers she is entitled to one third. Thus:—

* On the death of two of the proprietors, their widows were their sole heirs, and they were entitled to take two shares out of three, or one share each in right of their respective husbands. On the death of the other brother, his heirs being two sons, his share should have been made into two parts, of which each of his sons was entitled to one. On the death of the widow of the eldest brother, her property, that is, one share which she inherited from her husband, should have been made into two parts, of which her husband’s brother’s sons were each entitled to one. On the death of the eldest son of the third brother, his property should have been inherited by his widow, to the entire exclusion of the others. On the death of the other son of the third brother, his property should have devolved exclusively on his nearest sapinda, who by law becomes his legal heir, and on the death of the widow of the second brother, her property also should have devolved on her nearest Sapinda, a female having no title to inherit from her Sapindas. Consequently, supposing neither of the surviving individuals to have received any share, the property should be made into six parts: of which the widow of the third brother’s son will take in right of her husband two shares, one of which he inherited from his father, and the other from the widow of his paternal uncle, the eldest son of his grandfather; and the Sapinda, or the fifth in degree of the paternal line, will take the remaining four, that is to say, two which he inherited from the second brother’s widow, and the other two from the second son of the third brother.
Patni is the wife married in due legal form. Although from the etymology of the term as implying a connection with religious rites, and according to Amara’s definition: ‘Patni is the wife who is married in due legal form, who is (as it were) a second self (to the husband,) and who is an associate in religious rites;’ and also according to other authorities it appears that she who is Patni, is also dharma-patni, yet dharma-patni is generally understood to be that wife in conjunction with whom the husband performs the religious rites. The religious rites should be performed with the eldest wife living, unless she be disqualified by reason of some defect, in which case the next wife duly qualified, must be the associate in religious acts. Thus Daksha:—“The first wife is espoused from a sense of duty; the second excites sensual desire: union with her being productive of things of sense only, not spiritual things. The first wife is called the wife whom religious acts concern, provided she be free from defect; but if she be not, then it is no offence to employ another duly qualified.”—See Coleb. Dig. Vol. II. p. 409.

The rank of Patni belongs in the first place to a woman of the highest tribe: for the text of Sankha, &c. expresses, that “the eldest wife takes the wealth,” and seniority is reckoned in the order of the classes. Thus Manu says, “when regenerate men take wives both of their own class and others, the precedence, honor and habitations of those wives must be settled according to the order of their classes.” Therefore [since seniority is by class,] a woman of equal class, though young in respect of the date of marriage, is deemed the eldest. The rank of patni belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly Manu says: “To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere chaudāli begotten on a Brāhmaṇī.” But on failure of a wife of the same class, one of the class immediately following [may be employed in such duties.] Thus Vishnu ordains: “If there be no wife belonging to the same class, [he may execute the business relating to acts of religion] with one of the class immediately following, in case of distress. But a regenerate man must not do so
with a woman of the Shádra class.” “Execute business relating to acts of religion,” is understood from the preceding sentence. Therefore a Bráhmaná is lawful wife (patní) of a Bráhmana. On failure of such, a Kshatriyá may be so, in case of distress; but not a Voishyá, nor a Shádra, though married to him. A Kshatriyá woman is wife of a Kshatriya man. In her default, a Voishyá woman may be so, as belonging to the next following tribe; but not a Shádra woman. A Voishyá is the only wife of a Voishya: since a Shádra wife is denied in respect of the regenerate tribes simply.—Dá. bhá. Ch. xi. sect. I. p. 176, para. 47.

From the above quoted passages of the Dága-bhága, it appears that formerly marriage was permitted and contracted also with a woman of a different class or tribe. It is however immaterial now to advert further to this, inasmuch as in the present (Kali) age such unions are expressly prohibited.* Patní in the present age can, therefore, signify no other than her who is of the same class as her husband.† So if there be many wives of the same class, they are all patnís, and religious rites, are by turn performed with all of them according to the following text: “Or without partiality he may perform the rites of religion with all his wives successively, in periods settled according to their respective precedence, or settled of his own authority to the best of his knowledge.”


Patní as used in the singular number by the Rishis and commentators, is applied collectively to all of one class;‡ therefore,—

Vyavasthá. 22. If there be two or more wives, they have equal title to inherit the estate of their late husband;§ since they being of the same tribe are all Patnís.

The author of Viváda-bhangárnava says: “If a man die leaving two wives equal in class, the eldest alone has a right to his estate; for on the concurrent text of Dáshi and Víshnu, (viz. ‘The first wife is espoused from a sense of duty; the second excites sensual desire;”

* “Undertaking sea voyages (to circumnavigate the world;) the carrying of a káman-dálu (by a house-holder;) the marriage of twice born men (i.e. Bráhmaná, Kshatriya and Voishyá) with damsels unequal in class”—premising these and other practices, the ViRat Nárádya parádsa adds: “The wise have declared that these practices must be avoided in the Káli age.”— see Coleb. Dig. Vol. III. p. 141. These practices have also been prohibited in the A’díitya or A’díparádsa. See also ante, p. 14.
union with her being productive of things of sense only, not spiritual things. If many wives of his own class be living, with the eldest alone should the husband perform religious rites,' and by the text which declares 'the eldest wife is the patni;’ the term patni indicates Dharma-patni, the other wives are to get maintenance only.” And this he affirms to be the opinion of Jímála-váhana. This is not correct; for Jímála-váhana has only declared that, among the wives of different classes or tribes, she who is of the same tribe is the patni, as she is the eldest of all; but has not laid down that where there are many of the same tribe, the eldest exclusively is the patni. It is true Visnú has said: “If many wives of the same class be living, with the eldest alone should the husband conduct business relating to acts of religion;” that, however, cannot be taken to destroy the heritable rights of the other wives of the same class; since by performance of religious rites in conjunction with the husband a wife becomes Dharma-patni, but this does by no means entitle her to inherit to the exclusion of other wives, nor by her acquiring that grade or rank the rights of the wives who are also patnis are at all affected, the title of each and all of them being based on the performance after their husband’s death of acts or rites beneficial to his soul; and therefore it is, that all widowed patnis, who persevere in religious observances, equally inherit their husband’s estate.

Vya
avasthā. 23. Upon the death of any of several widows of a deceased proprietor, the property inherited by her devolves on the surviving widow or widows; since no property can go to the next heirs of the husband so long as his widow survives.*

Bhaga-batí Rár versus Ráth-kriśna Mukhopadháya (Mookerjea.)

Case bearing on the vyavasthā No. 23. Rám-sunder Adhikári left two widows and no children. This action was by one of the widows to recover possession of an undivided moiety of the houses and lands of her husband: it was undefended. She proved a prima facie title in Rám-sunder Adhikári to part of the premises in the plaint,—viz. four bighás and some kathás (of land) at Sutanuti in Calcutta (ancestral property;) for an undivided moiety of which the Court gave Judgment for lessor of the plaintiff.—Montriou’s Cases of Hindu Law, p. 314.

I. This was a bill filed by the surviving eldest widow of Rám-kánta Sen, deceased, against the defendants, the one as the surviving executor and trustee under the will of her husband, the other as having, with the first, possessed himself of property of the deceased, and the bill prayed an account of the personal estate and of rents and profits of the real estates, to the plaintiff; as the widow, heir, and legal representative of her deceased husband, and pay and deliver over the same to her, and also to deliver up, in order to be cancelled, three several deeds of gift and general release, obtained from the plaintiff by the defendants under circumstances of fraud and imposition set forth in the bill; and she also prayed to be let in to possession of the several parcels of land mentioned in the several deeds of gift.

It appeared by the answer and depositions that Rám-kánta Sen died, leaving two widows, the plaintiff his elder widow, and Alunko (properly, Ananga) Dási the younger, then about fourteen years old and without leaving any issue. Two days before his death he made a will, to which he appointed the defendant Rám-kánai Dutt and Rám-behary Dutt* his attorneys, to collect his debts, rents &c., and pay the same in to his estate; and he thereby ordered them to pay Rs. 2000 to his elder wife (the plaintiff,) and Rs. 2000 to his younger wife, and to pay for their maintenance. They were also directed to perform the worship of the deity as the testator had done. And he willed that no body should sell his estate. It was also admitted by the answer, and deposed, that, at the time when the deceased made his will, he declared to his attorneys therein named that the will was made merely to guard against the youth and inexperience of Alunko Dási his younger wife, and as a check upon her; and that after his death the defendants were to realize his estate and deliver it over to the management of his elder wife, and that she should maintain the younger.

Both parties, agreed to the truth of this statement at the time it was made; but when it came to be read, an objection was started as:

---
* This is a misprint: it should be Rásh-behári Dutt.
to its legality, and the opinion of the pandits was desired by both parties to be taken, which was accordingly done as after stated.

Several depositions were read, to shew that the defendants after the death of Atunko Dasi the younger widow, which took place about four years previous to the institution, agreed in considering the plaintiff as the owner of the estate, and obtained from her, on that supposition, deeds of conveyance of it, after a pretended account made up by themselves.

In this case the following questions were put to the pandits, and answers given by them are as follows:—

1. Q. If a Hindu die without leaving issue, but leaving two widows, does the whole estate go to his widows for their lives? and on the death of one of them afterwards, does the whole survive to the other widow?

   1. A. The whole estate does go to the two widows; and on the death of one, the whole goes to the survivor; and on the death of the survivor, it goes to the collateral heir of the husband, such as a brother, &c.

2. Q. Can a Hindu make a disposition of his property both verbally and in writing at the same time?

   2. A. He may.

3. Q. If the writing and parol disposition be contrary one to the other, which is to prevail?

   3. A. The writing must prevail, as being the more certain evidence of the testator’s disposition.

The court had no doubt of the fraud in taking the conveyances, and decreed them to be given up to be cancelled.

They also decreed an account, considering the plaintiff as at all events entitled to the account.

Note by Sir E. H. East.—The dedication to the deity is no disposition of the property; and many cases have determined that it is no objection to an heir-at-law taking an undisposed residue, though a specific legacy be given to him by the will. There is no other way to exclude an heir than by giving it to some body else: therefore,
if from the circumstance of part being given an inference could be raised that the testator meant the heir should have no more, yet even against that intention the heirs would take.—26th of July 1816. East's Notes, case No. 54.

24. The widow is only to enjoy her husband's Vyavastha's estate: she is not competent to make a gift, mortgage or sale of it.*

Vyavastha. 25. Thus Kātyāyana says: "Let the childless & Authority: widow (pmtās) preserving unsullied the bed of her lord (y) and abiding with her venerable protector (r) enjoy the property, restraining herself (1) until her death. After her let the heirs take it* (v)."


The author of the Vivaśa-bhaṅgaraṇa takes the expression "Nārhati" (is not competent) in the sense of "ought not," and says: "it appears from the term 'ought not,' that if she do so, the act is valid: but the giver shall be answerable for bestowing that which ought not to be alienated."—(See Colcb. Dig. Vol. III, p. 464.) Such ingenuous opinion is by no means to be respected: inasmuch as it is opposed not only to the doctrine established by the paramount authorities, but even to the declaration of the said author himself, who thus concludes an exposition of the widow's right and privileges: "Whence it fully appears that her disposal of it at pleasure, otherwise than by the (simple) use of it, or by donation for the benefit of her lord, is invalid. See Colcb. Dig. Vol. III, p. 465.

The meaning and policy of this law explained by Sir William Macnaughten, are as follows:—"So far as to the right of succession, the law is clear and indisputable; but as what she succeeds is not so apparent. She has not an absolute proprietary right, neither can she, in strictness, be called even a tenant for life; for the law provides her successors, and restricts her use of the property to very narrow limits. She cannot dispose of the smallest part, except for necessary purposes, and certain other objects particularly specified. It follows, then, that she can be considered in no other light than as a holder in trust for certain uses; so much so, that should she make waste, they who have the reversionary interest, have clearly a right to restrain her from so doing. What constitutes waste, however, must be determined by the circumstances of each individual case. It was probably never in the contemplation of the legislator that the widow should live apart from, and out of the personal control of her husband's relations, or possess the ability to expend more than they might deem right and proper. In assigning a motive for the ordinance that a widow should succeed to her husband and at the same time that she should be deprived of the advantage enjoyed by a tenant for life even, it seems most consistent with probability that it originated in a desire to secure, against all com-
Vyavastha-darpana.

(y) "Preserving unsullied the bed of her lord"—that is, not cohabiting with any other man.—Dāya-tattva, Sans. p. 52. See ante, p. 24.

(r) Ragu-nandana in the Dāya-tattwa reads "Vrata sthitā" (devoted to the religious observances) in the place of "gurou sthitā" (abiding with her venerable protector) and the reading is expounded by the commentator Kāshī-rāma "diligent in such observances as may be beneficial to her husband in the next world."

(r) "Abiding with her venerable protector"—that is abiding with the father of her husband and so forth, or, on failure of such (guardians) with her own father and the rest.—Jagau-nātha. See Coleb. Dig. Vol. III. p. 471.

(r) "Abiding with her venerable protector"—that is, staying in her husband's family with her father-in-law or other members thereof, let her, so long as she lives, enjoy her husband's estate, and not, as with her independent property (strī-dhanā), make a gift, mortgage, or sale of it, at her pleasure.—See Dā. bhā. Ch. XI. sect. 1, para. 37.

The law, it is true, prescribes a widow's condition as only "abiding with her venerable protector," but this injunction must be adhered to in spirit rather than to the letter. It is not to be concluded that if her husband's family contains no male, or if it be impracticable for her to stay therein, the widow cannot, even for so just a cause, and with no improper intent, leave the home of her husband's family and take up her abode with her own father and the rest,—a conclusion contrary to reason, and consequently to justice. Thus Vaihaspati, says:—"It is not proper to found a judgment on the law (i. e. the letter of the law) alone: a Judge loses his integrity who gives a judgment which

...
is at variance with reason."* We say then, the purport of the injuction is, that it is preferable that the widow should abide under the protection of the family of her father-in-law; but,—

**Vyavastha.** 26. If it be impracticable for the widow to stay in the family of her husband, because of oppression or other just cause, she may betake herself to the family of her father and the rest, provided that her change of residence be not for unchaste purposes.

(1) "Restraining herself (kshónátà)—being abstemious: according to the commentators Sri-krishña & Achyutā.

"Kshónátà or Khyónátà,"—not prodigally expensive, but enjoying the estate with frugality; such is the exposition of the commentators. The meaning is that she may use it to support life, but not to wear delicate apparel or the like.—Jagan-nātha. See Coleb. Dig. Vol. III. pp. 471, 472.

(v) In the phrase "the widow (patnī) will enjoy the property, restraining herself, until her death"—the word "patnī" is put merely for an example, and embraces all females entitled to inherit. If it be asked why this term should be held to comprehend all such women? the answer is, that the property which devolves by inheritance on a woman not being Sṛi-dhan (that which is private and peculiar to a woman,) and who are to succeed not being pointed out, the text is unnecessary, and it is left to ascertain the heir: now, the modes of succession of females (entitled to inherit) being alike,—

**Vyavastha.** 27. It is to be held that the heir of the former (male) owner succeeds to the property of an inheritrix; consequently, the word patnī intends any female entitled to inherit†—Sri-krishña’s commentary on the Dāya-bhāga, Sans. p. 205.

The inference is the same when any other succeeds (to the estate of the deceased.)—Coleb. Dig. Vol. III. p. 461.

(v) By the phrase "After her let the heirs take it" it is meant that when she dies, the daughters and others, who would regularly be

† Whenever a female succeeds, she does not obtain a full proprietary right of inheritance, but is only entitled to enjoy it under the guardianship of the next heir of the deceased. At her death, the estate, augmented or lessened, does not go to her heirs, but to the nearest heir of the person from whom she received it, who is in existence at the time of her decease. Ed. In p. 68, Sect. 52, para. 4.
heirs in default of the wife, take the estate; not the heirs of the woman's separate property; for the right of those is relative to the property of a woman (other than that which is inherited by her.) Therefore, those persons, who are exhibited in the text ("The wife and daughters," &c.) above cited (ante, 23) as the next heirs on failure of prior claimants, shall, in like manner, as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested.† — See Dá. bhá. Ch. XI. Sect. I. p. paras. 57, 58, 59; See also Coleb. Dig. Vol. III. p. 479.

In the Mahá-bhárata, in the chapter entitled Dána-dharma, it is said: "For women, the heritage of their husbands is pronounced applicable to use (s). Let not women on any account make waste (h) of their husbands' property."* Hence,—

Vyavastha. 28. A widow cannot make waste of her husband's property under any pretence, even though there be no reversionary heir to prevent the waste of such property and to take it after her death.

Authority. Inasmuch as such estate is always a restricted estate of inheritance, and she is always subject to control.—If there be no kinsman of her husband or father, the ruling power, whose succession to her inherited estate is contingent in default of other heirs, should control her and prevent her from making waste.†

In point of fact, the females are kept in a continual state of tutelage. Thus Manu:—"In childhood must a female be dependant on her father; in youth, on her husband; her lord being dead, on her sons; if she have no sons, on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign: a woman must never seek independence."† — Ch. V. v. 148.

(s) Even use should not be by wearing delicate apparel and similar luxuries; but since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized.* Hence,—

† See the text of Káma, post. p. 62. See also the succession of the king, and Coleb. Dig. Vol. III. p. 544; also Str. H. L. Vol. I. p. 104.
29. If she be unable to subsist (otherwise,) Vyavastha, she is authorized to mortgage the property; or, if still unable, she may also sell it: for the same reason is equally applicable.*

30. In like manner (since the benefit of the husband is to be consulted†) even a gift or other alienation (a) is permitted for the performance of the husband’s funeral rites, &c. (i). Accordingly the author says, “let not women make waste (b).”**

(h) Here “waste” intends expenditure not useful or beneficial to the (late) owner of the property.—See Coleb. Dá. bhó. Ch. XI. Sect. 1, para. 61.

(a) By the term “other alienation” is meant mortgage or sale.

(i) “For the performance of funeral rites, &c.”—That is for conferring benefits on the husband in the next world.—Srî-krishña’s Commentary on the Dáya-bhága, Sans. p. 194. Hence,—

31. She may give to the paternal uncles and other relations of her husband presents in proportion to the estate, for the benefit of his departed soul.*

Authority. Vrahaspati directs it, saying: “With kavya and párta, (a)† let her honor the paternal uncles (o) of her husband, his spiritual parents, and daughter’s sons (k), the children of sisters (g), maternal uncles (j), and also old (briddha) and unprotected persons (t), guests, and females (of the family) (d).”*

(a). Kavya signifies whatever is presented to the manes, or for the benefit of the deceased; Párta means food, drink, &c.†—Srî-krishña’s commentary on the Dáya-bhága, Sans. p. 167.

---


† Srî-krishña’s comment on the Dáya-bhága, Sans. p. 195.

‡ ‘With kavya,’ that is, with a sûrdhá after death; and ‘with párta,’ that is, with maintenance during life,—conformably to the literal sense of the verb ‘pri,’ (cherish or fill.) But some lawyers expound the same phrase ‘honor the paternal uncles of her husband and the rest, at the (kavya) rites sacred to the progenitors, and at the (párta) rites sacred
(o). The term "paternal uncles" intends any of her husband's _sapindas_ or kinsmen allied by a common oblation cake. (k) "Daughter's sons" mean the descendants of her husband's daughters. (g) By "the children of sisters" is meant the progeny of her husband's sister's son. (j) "Maternal uncles" signify her husband's mother's family. _Jimanta-vāhana_. —See _Dā. bhā_. Ch. XI. Sect. 1, § 63. See also Coleb. Dig. Vol. III. p. 462.

(j). "Maternal uncles" —that is, the maternal uncles of her husband.—_Sri-krishna Tarkālankāra_. —See _Dā. kra. saṅg_. p. 6.

(d). "The females (of the family)" —that is the widows of her husband's son and the rest.*

(t). The term "old" implies also learned men, for both the words _briddha_ and _buddha_ in the Dictionary of _Amara_ are exhibited among the synonyma of "learned." —See Coleb. Dig. Vol. III. p. 460.

* On this some remark, the practice of this country goes farther; but, however in- telligent he may be, a man cannot contemplate every possible case. Some _Brāhmaṇas_ spring from a dignified race; those who give daughters in marriage to them are exalted with their own lineage; if they do not dispose of their daughters to such persons, reverence is withdrawn; these _Brāhmaṇas_ accept damsels in marriage from many families, but neither maintain those wives nor their offspring. Such being the notorious practice, if her (the widow's) husband have died after giving a daughter in marriage to a man springing from a noble family, and that daughter, though virtuous, be not supported by her own husband, (for, according to general practice, he is only bound to support his wife if his father-in-law, with the generosity of his ancestors, allot food and apparel to that wife, and, means permitting, give land or the like for her future maintenance;) that daughter must, if possible, be supported by her mother: else, how shall she subsist like an unprotected person, although she have a protector. This very practice is also proper in respect of the daughter of her father-in-law; for the dignity of her husband was raised by such act of her father-in-law (bestowing his daughter on a man of noble birth.) The grand-daughter in the female line must, if possible, be likewise maintained; for she also is such as is a daughter; and persons of noble birth must give their female children in marriage to men born of noble families. This practice, founded on the rank established by the mighty prince _Balālā Sena_, has been adopted by great personages. Though not found on codes of law, it is noticed (in this place) to explain the (subsisting) practice. It should be examined by the suspicious (learned.) Hence, either these women must be comprehended under the term "females of the family," or else the usage of contracting numerous marriages must be discontinued.—Coleb. Dig. Vol. III. pp. 460, 461.
The daughters of the husband's sisters, if destitute of protectors, included under the term "unprotected persons," otherwise they to be supported by their lords.—Coleb. Dig. Vol. III. p. 460.

If this however should, if possible, be done at the charge of her band's estate; otherwise (if the funds be inadequate) it must be words only. It is not necessary that she should deprive herself of means of subsistence to support the uncles and other relatives of husband; nor should she, for that purpose, do what is unauthorised by the law. But her husband's father and mother, being old, be maintained, even though the utmost distress ensue; for vu declared that "a mother and father, in their old age, a virtuous , and an infant son, must be maintained even by the commission hundred offences." By this text of Manu the widow's husband g authorised even to use irregular means for the support of his her and the rest, it is incumbent on the widow to support his wns.—Ibid. p. 460.

32. To these and to the rest, let her give presents, and not to the family of her own father, le such persons are forthcoming for the specific mention of nnaal uncles and the rest would be superfluous.*

33. With their consent, however, she may bestow gifts on the kindred of her own father l mother.*

34. In the disposal of property, that is, in gift or other alienation, she is subject to the control of her band's kin, after his decease, and in default of sons.—Dā. bhā. p. 183.

Thus Nārada says: "When the husband is deceased, his kin are the guardians of the childless w. In the disposal and preservation of property,† as well as in her

---

† There are two readings of the first part of the second hemistich of the abov e (verse : I. "Visiyogitha-rakhyadu" (in the disposal and preservation of property.) I. "Visiyogita-rakhyadu" (in the disposal of property and care of herself.) Ms. Coleb. it, at p. 384, ch. I. Book IV of Jagen-nātha's Digest, has, in the translation of the
maintenance, they are her Ḭiṣhwarā (lords.) But if the husband's family be extinct, or contain no male, or be helpless, the kin of the widow’s father are her guardians, if there be no relations of her husband within the degree of Sapinda.” (n) —Vs. 13,28,29.

(n) Others expound the (above) precept of Nārada as signifying that the (nearest kinsman in the) family of her husband has authority in the disposal of property, that is, in donation. She may give a present to that person on whom the kinsman of her husband bids her confer one; she may bestow that which he bids her give away.—Jagan-nātha.

(n) The term “iṣhwarā” being used in the text of Nārada, a woman is pronounced subject to the control of (the nearest kinsman on) husband’s side, in respect of gift, which is an alienation. Modern lawyers do not concede to this opinion; for the validity of a gift made by the owner should not be impugned while no special text pronounces it void. As for the declared subjection of women to the control (of the nearest kinsman,) when deprived of husband and son, it does not thence appear that the gift made by her is void; for the implied object (of the text) is only to show sin in not subjecting herself to the control of (the kinsman on) the husband’s side.—Ibid. p. 461.

Against the above opinion of Jagan-nātha’s, it may suffice to say, that neither Jīmūta-vāhana and Rāghu-nandana, nor any one of the other

above vāchana, adopted the second reading, and added in a note subjoined: “the preservation of wealth; a various reading; in Book V, Ch. VIII.” But in the place referred to, he says nothing about the various reading. He only gives there the translation of Jagan-nātha’s comment on some words of the vāchana, referring for its translation to Book IV, Ch. I, and omitting (why, it does not appear,) the translation of Jīmūta-vāhana's opinion as to the meaning of the vāchana, which opinion is quoted in the original. The same learned writer, in his translation of the Dēyā-bhāga has adhered to the second reading; and Mr. Wynch, in the translation of the Dēyā-krama-saṅgraha, has simply quoted Colebrooke’s translation, though, singularly enough, in his edition of the (Sanskrit) text he has adopted the first reading. I adopt the first reading, not only because I find it in some parts of the Vīvāda-bhāngōrāyana, the original of Colebrooke’s Digest, and in all the editions of Dēyā-bhāga and Dēyā-krama-saṅgraha, especially the copy of the Dēyā-bhāga edited by the present professor of Hindu law in the Government Sanscrit College, who, I know, has spared neither time nor pains to restore the text, and whose superior competency for the task cannot but be acknowledged, but also because the first reading expresses what is generally held to be the true intent of the law.
modern compilers and commentators, respected as superior authorities, has expressed or confirmed the doctrine alluded to by Jagan-nātha; on the contrary, all of them have pronounced opinions totally at variance with the doctrine in question. Nay Jagan-nātha himself, after quoting the text of Vivāda-chintā-maṇi, has pronounced all such alienations to be void on the ground of being made by one who is not owner, and not competent to make such alienations. Thus the new doctrine broached by the said author is rebutted even by himself. The (modern) pāṇḍits have, almost unanimously, been opposed to the new doctrine; and in conformity with their vyavasthās the courts of justice have declared gifts, &c. made by widows (unauthorised by the śāstra) to be invalid. Only a very few pāṇḍits had given their assent to the contrary doctrine; but they have not been in any degree followed. Two other like opinions of Jagan-nātha’s contained in his digest Vol. III. pp. 457—466, have been refuted by the very Transalator thereof, Mr. H. Colebrooke, the highest European authority on matters of Hindu law.—See post. pp. 92,93.

Jagan-nātha, moreover, basing his argument on the texts of Mahābhārata and Kāṭṭāyana, has concluded thus: “Whence it fully appears, that her disposal of it at pleasure, otherwise than by the simple use of it, or by donation for the benefit of her lord, is invalid.” (See Coleb. Dig. Vol. III. p. 63.) Surely then, it is beyond the subtle ingenuity of the modern lawyers, including Jagan-nātha himself, to controvert a doctrine so conclusively laid down.

“This also is a duty strictly incumbent on her not to appropriate the wealth of her lord to civil purposes, any more than consecrated property. Yet if she inadvertently make a gift or other alienation, it is valid (though blamable: ) however, the king, informed by the heirs should duly punish her, not the acceptor of that donation; for no law authorizes his punishment. Such is the rule of decision established by modern opinions.”—(Coleb. Dig. Vol. III. p. 566.) This, in truth, is another ingenious doctrine, and seems to have been introduced by Jagan-nātha himself under the pretended sanction of the modern authors: for it is nowhere declared by them that a gift or other alienation, inadvertently made by the widow, of her husband’s property for any purpose other than to benefit her departed husband, is valid. On the contrary, the courts have invariably, in conformity
with the opinion of the modern pandits, declared such alienation to be totally invalid, as will be apparent from the precedents cited.

**Vyavastha.** 35. A widow is, however, competent, even without the consent of the reversioners, to make a sale or other disposition of her husband’s property for the liquidation of his debts, for the marriage of his daughter, for the support of such persons as it was incumbent upon him to support, likewise to defray the expenses of such other acts as are beneficial for his soul or very necessary to be performed.

Great benefit is done to a departed soul by paying his debts, by bestowing his daughter in marriage, and supporting his family: indeed, if these duties be neglected, he is doomed to hell.

**Authority.**

I. “Fathers desire male offspring, for their own sake, reflecting, ‘this son will redeem us from every debt whatsoever due to superior and inferior beings.’ Therefore, a son begotten by him should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment. If a devote man, or one who maintained a sacrificial fire, die a debtor, all the merit of his devout austerities, or of his perpetual fire, shall belong to his creditors.”—Nárada. Coleb. Dig. (Calcutta edition, Vol. I. p. 299. See the Section treating of debts.

II. “To maidens should be given a nuptial portion out of the father’s estate.”—Devala. See Coleb. Dig. V.1. I. p. 185.

III. This is proper: for, should the maiden arrive at puberty unmarried, through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus Vāshishta says: “So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and mother; this is a maxim of the law.” So also Pṛthāśaṅkha: “A damsel should be given in marriage before her breasts swell. But if she have menstruated (before marriage,) both the giver and the taker fall to the abyss of hell; and the father, grandfather and great-grandfather are born (insects) in ordure.” Therefore, she should be given in marriage while she is yet a girl.—See Dá. bhá. pp. 298186;—Coleb. Dig. Vol. III. p. 460.
IV. "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore, (let a master of a family) carefully maintain them." MANU declared, that a mother and a father in their old age, a virtuous wife, and an infant son, must be maintained even by the commission of a hundred offences. By this text of MANU the widow's husband being authorized even to use irregular means for the support of father, and the rest, these should certainly be supported by his widow.—Ibid.

V. Raghu-nandana too acknowledges that, for the purpose of raising her husband to a region of bliss, a wife may give away property left by him, and devolving on her by the failure of male issue. Hence it is understood that she ought not to give away his property for any other purpose. Váchaspati Bhuttákürjya has delivered the same exposition. Bhava-deva also concurs nearly in the same opinion.—Coleb. Dig. Vol. III. p. 464.

Vyavastha'. 36. Should it happen that the widow is unable to maintain those who must be supported, to discharge the debts of her husband, and perform those acts which are indispensable, unless she sell or otherwise dispose of the greater part or the whole of her inherited property, she is allowed by law and competent to do so; but in order to enable her to perform such religious acts as, though beneficial to her husband, are optional, she may dispose of only a small or moderate portion.—Such dispositions for such acts are valid in law even though the same be made without the consent of her husband's kindred or reversioners.*

If nothing ought to be given by a wife, may she, or may she not, give money to the king by way of fine when she has committed a sin deserving pecuniary punishment? She must necessarily pay the

* The meaning is this, that pursuant to the ordinance of NÁRADA (ante, p. 51) the widow, ought to ask her husband's kinsmen or next heirs to permit her to make the disposition for the performance of the acts above mentioned, but if they do not give permission to the same, she can still make the disposition in question, which nevertheless will hold good.
fine by way of atonement: the prohibition relates to gifts (and payments) other than such as are positively ordained.—Coleb. Dig. Vol. III. p. 466.

She whose husband is deceased should support, in proportion to her ability, the same persons, and do the same acts, in the same manner in which her husband, when living, supported those persons, and did those acts. But it is not absolutely necessary that she should fulfil the same voluntary offices which her husband did, such as supporting Brāhmaṇas resident in the same town and the like. This is deduced from the term "unprotected persons." (Ante, p. 49.)—Coleb. Dig. Vol. III. p. 461.

Whatever the husband had promised to give to a person, the same, after his death, should be given by the widow to the same person, as that also is a debt (of her husband.) So says Hārīta:—"A promise made in words, but not performed in deed, is a debt (of conscience) both in this world and the next. He, who gives not what he has promised, and he, who takes what he has given, sinks to various regions of torment, and springs again to birth from the womb of some brute animal."—Ibid.

Whatever (was) most desirable in the world, whatever was eagerly sought for by her husband, that should be given to some meritorious man, by the widow, anxious to gratify her husband.—Smṛiti cited in Dāya-tattwa, &c. See Ibid. p. 467.

For these and other religious but optional acts the widow should and can give or alienate only a small or moderate portion of the wealth.

The inference is the same when any other (female) succeeds (to the estate of the deceased.) Coleb. Dig. Vol. III. p. 461.

Vyavastha. 37. For the widow, however, to dispose of the whole of her husband's property even with the consent of his heirs, to a person other than the next reversioner, unless it be to confer a very great benefit on the husband in the next world, is an irreligious as well as immoral act, though valid, it being above all things requisite that enough be retained to ensure the performance of the Skṛādḍha, &c. of the husband.—See the section treating of charges on the inheritance.
Vyavastha. 38. But a gift or other alienation by a widow of a moderate portion of her husband’s property, for his spiritual benefit (be the same made with or without the consent of his heirs) is religious and moral as well as valid.

Vyavastha. 39. If, however, the reversioners supply, or agree to supply, the widow with maintenance, and money for the performance of the necessary and optional acts as above mentioned, she cannot alienate her husband’s property without their consent: If she do, the act is invalid.

Vyavastha. 40. And if the necessary acts* could possibly be performed with the wealth or with the produce or income of the estate left by the husband, then the estate cannot be sold for the performance of such acts, or on account of the debt contracted by the widow at her own pleasure, or for any optional act of her own.

“To women, the heritage of their husbands is pronounced applicable to use; let not women on any account make waste of their husbands’ property:” this text of the Mahá-bhárata, and the following of Kátyáyana: ‘The widow shall enjoy her husband’s property restraining herself until death, after her, let the heirs take it,’” (ante, pp. 45&48,) declaring frugal enjoyment to be the only fruit derived by the widow from her husband’s property, forbid the transfer of such property to another; whence,—

Vyavastha. 41. It fully appears that the widow’s disposal of her husband’s property at pleasure, otherwise than by the simple use of it, or by donation for the benefit of her lord, is invalid.—Coleb. Dig. Vol. III. p. 465.

Vyavastha. 42. At present, however, the widow’s disposition not for her husband’s benefit, or for an allowable cause, but at her own pleasure, is held invalid only when it is not consented to, or ratified by, the next heir of the husband.

* The payment of revenue is considered one of the necessary acts. See the cases bearing on the Vyavastha No. 40.
48. It has also been decided that with the consent of the then next heir or heirs, the widow may alienate for any purpose the property she inherited from her husband. And if unable to manage, or unwilling to hold, she may give or make over the same to such heir or heirs;—and that such dispositions are valid provided the persons who would be heirs of her husband at her decease should not have a title preferable or equal to that of the donee; as otherwise the gift would be invalid in whole or in part as the case may be.—See post. p. 69. Note.

44. But if a widow without the consent of her husband’s heirs dispose of his property for purposes not sanctioned by law, they are entitled to interfere and prevent any such wrongful alienation by her.* This, however, is confined to the immediate heirs, and does not extend to those next in succession or contingent, unless the former be proved to be in collusion with the widow, or have authorised the latter to interfere.

45. In case of an alienation by the widow being declared totally void, she may resume possession of the property alienated, provided she has not committed any act involving forfeiture of right to inheritance. (In other words:)

46. Although the reversioners may have an alienation made by the widow of her husband’s property, for purposes other than those allowed by law, and without their consent, invalidated, yet they cannot possess of such property even though the same had been alienated to injure or subvert their rights, or with the object of defrauding them.


It has been held by the Dispensers of justice that the time for such interference is to the end of the widow’s life, and within 12 years from her death, unless there was adverse possession, in which case, it is within 12 years from the date of such possession; and for a minor reversioner the time runs to 12 years from the date of his estate vesting or his coming of age.—See Râj-mahâ Diśī versus Gobinda-chunder Roy and others. S. D. A. Decisions for 1857, p. 341, in which it was determined that the date of a Hindu widow’s death is the cause of action for the reversionary heir; the limitation of sixty years upon the ground of fraud is inapplicable. See also the Appendix pp. 1052&1053, and the cases bearing upon the vyavastha No. 44.
Because while she lives free from any defect causing exclusion from inheritance, no body else can be her husband's immediate heir, and take possession of his property by right of inheritance, the widow's heritable right not being destroyed and vesting by such act in the reversionary heir; also because, right cannot remain in abeyance in expectation of a contingent heir* not ascertainable before her death, natural or civil.

According to the rule of gift also it should revert to her. Thus Rayhu-nandana: "The giver's right again accrues to him by the non-acceptance of the donee, although it had (once) ceased by the act of giving."—Shuddhi-tattvo.

Vyavastha. 47. If, however, it be satisfactorily proved that the widow has made waste to the injury of the rights of the reversioners, and the property is in danger, so that but for the interference of a court of justice, representing the Sovereign, the heirs, who may eventually succeed, would suffer loss from the acts of the widow, then, and not until then, the Dispensers of justice with a view of remedying or rather preventing such loss, may take the management of the property from her hands, or adopt such measures as to secure the estate for the ultimate heir, provided those measures do not affect the widow's rights as heir.†

Authority. "The king is to decide the doubtful points which can not (otherwise) be determined; for he is master of all."—A text of Brahma cited in the Vyavahāra-mayākha, and other books.

Vyavastha. 48. The fact of a widow's having recovered her husband's property by litigation gives her no additional power over it.

* See pp. 7, 260, 262, 239. See also the last foot note of page 930.

† It has been determined that a Court of justice, like the court of wards, may step in, and appoint a Receiver to take charge of the estate. The reversionary heir may be the Receiver, but his appointment as such is not by virtue of the reversionary right, but in consideration of what would be most for the benefit of the estate. The Court would give his possession conditionally upon his paying the income of the property to the widow, empowering her on the other hand to move for his removal on his not paying the same. See the cases bearing on the Vyavastha's. Nos. 455, 47.
Vyavasthá. 49. A widow should not also alienate, by gift, &c. all of her own acquisitions made by means of the property inherited from her husband.

Vyavasthá. 50. Inasmuch as by means of each portion of the estate, whether real or personal, movable, or immovable, benefits are procurable for the late owner, and as, further, the Dáya-bhága and other authorities of the Bengal school recognize no distinction between the two descriptions of property inherited by a woman, the widow is equally prohibited from making waste or improper expenditure of either.

Vyavasthá. 51. According to some of the Judges, any arrangement, settlement or alienation of her husband’s estate made by the widow, whether for an allowable cause or otherwise, should remain unreversed until her death; the reversionary heirs may, however, have their remedy even during the lifetime of the widow, against the grantee to prevent waste or destruction of the property.

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and approved of by Sir William Macnaghten.

Q. 1. A childless widow had obtained her husband’s estate, consisting of land and other property, by right of inheritance. Is she competent to give or sell the property, while there are her husband’s other heirs living; and if she make any alienation, is it legal and valid?

R. 1. The widow, destitute of male issue, may give a part of her husband’s property of both descriptions, movable and immovable, for the completion of her husband’s exequial rites; and when she is in want of subsistence for herself, she may sell such portion as may provide her with maintenance: excepting under these circumstances, any alienation by her, whether by gift, sale, or otherwise, must be considered null and void.

Q. 2. Is the widow, without the sanction of her daughter’s son, entitled to sell a small portion of the property? and supposing her to have actually made such sale, should it be upheld?
B. 2. If the daughter's son supply her with maintenance, she cannot alienate without his consent, and if she had actually sold the property, the sale is null; but in a case where the daughter's son declines to support her, she may sell such portion as may be necessary to her maintenance, without his consent, and the sale should be considered legal and valid.—Zillah Rajahahye. Macn. H. L. Vol. II. Ch. 8. Case 4. (Page 211.)

Q. A landed proprietor died, leaving a widow, a minor son, and a son's son. Subsequently to his death, the widow sold her husband's immovable property for the support of her minor son and son's son, and for the purpose of discharging the arrears of revenue due from the estate. Under such case is the sale legal?

R. Should a woman, on her husband's demise, sell his landed property for the purpose of maintaining her minor son and grandson, and liquidating the arrears due to Government, the sale must be considered good and valid, for it is necessary to provide food and raiment to the minors, and to discharge the revenue of Government. This is conformable to the Dāya-bhāga and other authorities.—Zillah 24-Purgunahs. Macn. H. L. Vol. II. Ch. 11. Case 2 (Page 293.)

Q. A person had five sons, two of whom died before him. Subsequently to his death, his surviving three sons equally shared the property left by him. One of the sons died, leaving a widow and a maiden daughter: the widow having succeeded him, disposed of the daughter in marriage, and bestowed a part of her husband's landed estate on the daughter and son-in-law, and some time after she gave the remaining property to them. Under these circumstances, are the gifts legal? If the gifts in favor of the daughter only are good and valid, and on the death of the daughter her husband and her paternal grandfather's daughter's son be living, which of these survivors will succeed her? Should the daughter have disposed of a portion of the property by gift, though her husband was living, in this case, is the gift complete and binding, or otherwise?

R. It is recorded in various legal authorities, that a widow cannot dispose of the whole estate which had devolved on her at
her by inheritance, although she may, under certain circumstances, give a small portion of it. In this case, the widow disposed of her husband's entire landed estate by two gifts, consequently the donation is null and void. On the death of the widow the succession should have devolved on her daughter, on whose death the property which she inherited from her mother should go to her paternal grandfather's daughter's son, her husband having no right to inherit it. If the daughter have disposed of a small portion only of the estate by gift, it may be considered legal. This is conformable to the Dāya-bhāga.—Zillah Rajshahye, May 21st. 1813. Macn. H. L. Vol. II. Ch. 3. Case. 3. (Page 123.)

Q. A Shádra died possessed of some landed property, leaving a widow, a daughter, and a daughter's son. A part of the property had been usurped by a stranger; and the daughter's son of the proprietor, with the sanction of his grandmother, instituted a suit to recover possession of the portion usurped. In this case, will the property in question go to the daughter's son or not? Supposing the original proprietor's widow, notwithstanding she had a daughter and daughter's son living, to have disposed of a portion of her husband's landed estate by sale, without their consent or knowledge, and not to have received the full value of the property from the purchaser; in this case is the sale to be considered valid and binding, or otherwise?

Sale by a widow without the consent of the next heirs of any part of the property devolved on her from her husband is invalid, except under special circumstances.

R. If a part of the deceased proprietor's immovable property have been forcibly seized by a stranger, and his (the proprietor's) daughter's son have instituted a suit to recover the property from the hands of the usurper, with the consent of the proprietor's widow, the daughter's son is entitled to the property in dispute, by reason of his being next heir to the deceased. Either a gift or sale, or any other alienation of the immovable property which had devolved on the widow, unless for the completion of her husband's exequial rites, or the like necessary observances, is illegal. Whatevery sum may have been settled as the value of the property sold, if the whole amount had not been paid by the vendor, the sale must be held invalid.
Authority:—

VRIHASPATI:—"A possession by strangers for three generations gives, no doubt, an absolute title; not a possession by kinsmen within the degree of Sapindas. The property of a house, arable land, a market, or other immovables, which are possessed by a friend, or a near kinsman in the male or female line, who is not the proprietor, shall not be lost to the rightful owner, nor shall the husbands, nor daughters, nor learned priests, nor the king, nor his ministers, acquire a title even by a very long and quiet possession."

The text of Mahá-bhárata in the chapter entitled Dána-dharma, and of Kátyáyana laid down in the Dáya-bhága and other works. See ante, p. 45.

VRIHASPATI:—"What has been sold, at a low price, by a man intemperate or insane, or through fear, or by one not his own master, or by an idiot, shall be given back, or may be taken forcibly from the buyer."—City Dacca, February 3rd, 1817. Macn. H. L. Vol. II, Ch. 11. case 9, (pp. 298, 299, 300.)

Q. There were three brothers who held some landed property in coparcenary, one of whom died childless, leaving a widow, who succeeded to the share of her husband. Subsequently, the surviving brothers sold their entire estate, including the share to which the deceased is entitled, to a stranger. The widow applied to a court of justice for her husband’s portion: a decree was passed in her favour, and she was put in possession of the property claimed. She then, notwithstanding that her husband’s two brothers’ sons and grandsons in the male line were alive, made a gift of the whole of her husband’s property, which she recovered by litigation, to one of her husband’s brother’s grandsons. In this case, has the gift validity or otherwise?

R. Under the circumstances above stated, the widow was incompetent to give away her husband’s whole property to one of his brother’s grandsons, while there were his other nephews and their sons existing, and the gift must be considered illegal, as
expressly declared by the following sages.* KÁTTÁYANA: “Let her enjoy with moderation the property until her death. After her, let the heirs take it.” (See ante, p. 45.) “Let the widow preserving unsullied the bed of her lord, take his share; but she may not seek independency while she lives, to give, pledge, or sell it.”

“Even in this case, if a partition should have been made, the widow is not entitled to the immovable property.”—Macn. H. L. Vol. II. Ch. 3. case 46 (Page 254.)

Q. I. A Hindoo Zemindar died childless, leaving a widow; who one day previous to her death, in full possession of her faculties, executed a will, or conditional deed of gift (dually signed and attested) of all the property, real and personal, with the profits accruing therefrom, to which she had succeeded on the death of her husband, together with the profits which had accrued therefrom, and all the property acquired by herself, in favour of a stranger. In this case, what property will pass by such will, or conditional deed of gift?

A widow cannot alienate, by gift or will, property devolved on her from her husband, nor her own acquisitions made by means of such property.

But she may dispose of her own peculiar property as she pleases, except such part of it as consists of immovable property given to her by her husband.

R. I. Although the instrument in question may have been duly signed and attested, and executed by the widow while in the full possession of her faculties, still she was not competent, without the consent of her husband’s heirs, and those of whom she was dependant, to make a conditional gift, stipulating for the possession of the donee after her death, nor was she at liberty to make a will affecting the landed and other property left by her husband, into the possession of which she came on his death, nor affecting the profits of it, nor affecting her own acquisitions made by means of the landed property to which had succeeded, or by means of its profits. As, therefore, the gift or disposition by will of all three descriptions of property above named, (viz. landed property devolved on her from her husband, personal property, and her acquisitions made by means of the inherited estate, and its profits,) is illegal, no part of that property goes to the

* There is an omission in this place. After the use of the expression “the following sages,” the name of KÁTTÁYANA only is put before his text; and it is not shown who else is or are meant by the plural term “Sages;” nor is the author of the two following texts indicated.
donee: but whatever the widow may have acquired, by means other than those of the inherited property and its profits, is her own Strī-dhan or peculiar property, and she is at liberty, (except in the case of im-
movable property given to her by her husband,) to dispose of such Strī-dhan by will or gift, as she pleases; and, therefore, the Strī-dhan of the widow, (except immovable property given to her by her husband,) can pass to the stranger under the will or conditional deed of gift. This opinion is given in conformity to the Dāya-bhāga, Śrī-krishṇa Tarkālankāra's commentary on the Dāya-bhāga, Dāya-tattva, Dāya-
rakasya, Kātvāyana, Manu, and other authorities current in Orissa.

Authorities:—

1st. Text of Kātvāyana, cited in the Dāya-bhāga, Dāya-tattva, and other authorities. See ante, p. 45.


3rd. “When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power.”—Text of Nārada, cited in the Dāya-bhāga, and other authorities.

4th. “But if the husband’s family be extinct, or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of Sapiḍa.”—Text of Nārada, cited in the Dāya-bhāga and other authorities.

5th. “In the disposal of property, by gift or otherwise, she is subject to the control of her husband’s family, after his decease, and in default of sons.”—Jīmūtavāhana in the Dāya-bhāga.

6th. “As the dependance of women in making gifts is on their husbands’ relations, it is evident that she may sometimes make gifts with their consent to her father’s family.”—Commentary of Śrī-
krishṇa Tarkālankāra.

7th. “For women the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of
their husbands' wealth.” Here the term waste indicates that they are not at liberty to dispose of the property as they please, by gift, sale, or other means.—Text of the Mahá-bhárata, cited in the Dáya-rahasya,

8th. “A gift, pledge, or sale of lands, houses, or slaves, by a dependant person, is invalid or inefficient.”—KÁTVÁYANA.

9th. “The wealth which is earned by mechanical arts, or which is received through affection from any other (than the kindred), is always subject to her husband's dominion. The rest is pronounced to be the woman's property. That which is received by a married woman, or by a maiden, in the house of her husband, or of her father, from her husband, or from her parents, is termed the gift of affectionate kindred. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of dominion and of sale, according to their pleasure, even in the case of immovables.”—Text of KÁTVÁYANA cited in the Dáya-bhága, Dáyakrama-sangraha, and other authorities.

10th. “What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property.”—Text of NÁRADA cited in the Dáya-bhága.

11th. “But in the case of immovables bestowed on her by her husband, a woman has no power of alienation by gift or the like.”—Jimúta-váshana in the Dáya-bhága.

12th. Gift consists in the effect of raising another's property.

Q. 2. In the event of such disposition being declared illegal and void, to whom will the widow's Strí-dhan go, supposing there to be descendants of her father or grandfather living; will it go to them, or to the nephews or other heirs of her husband? An answer is required to be delivered to this question according to the law of Orissa.

The Strí-dhan will be inherited by the woman's brother or brother's son, to the exclusion of her husband's heirs.

R. 2. The instrument in question having been thus proved to be illegal and void, supposing there to be descendants of the father or grandfather of the woman living, and she have no unmarried daughter, or affianced daughter, nor married daughter, nor son
nor daughter's son, nor son's son, nor son's grandson, nor stepson, nor stepson's son, nor stepson's grandson, nor husband, nor mother, nor father, nor husband's younger brother, nor son of her husband's younger brother, nor son of her husband's elder brother, nor son of her sister, nor son of her husband's sister, the Stri-dhan will go to her brothers, or her brother's sons, with reference to their propinquity, and not to the nephew or other heirs of her husband. This opinion is delivered in conformity to the Dāya-bhāga, Dāyakrama-sangraha, Dāya-tattva, and other authorities current in Orissa.

Authorities: —

"The sister’s fee belongs to the uterine brothers. After them it goes to the mother, and next to the father.

"The mother’s sister, the maternal 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 issue of their bodies, nor son (of a rival wife,) nor daughter’s son, nor son of those persons, the sister’s son and the rest shall take their property."—Text of Vaiñhazyāt, cited in the Dāya-bhāga, Dāyakrama-sangraha, Dāya-tattva, and other authorities.—Sudder Dewanny Adawliut, July 12th, 1815. Kanḍrupa Singh, Appellant versus Mohan-lāl Khán, Respondent. Macn. H. L. Vol. II. Case 49, (pages 259—262.)

Q. A Brāhmaṇ being in possession of some movable property consisting of cash, jewels, gold, silver, and other effects, died, leaving a widow and a daughter. The widow bestowed all her husband’s property of the above description on her daughter’s husband. In this case, was the property a fit subject to be disposed of by the widow, and will it go to the donee in virtue of gift?

R. In default only of the widow, the daughter can inherit; consequently the gift made by the widow to her daughter’s husband is good, and the donee is entitled to receive the property in virtue of the disposition in his favour.

Authorities: —

The text of Vyāsa cited in the Dāya-bhāga: —"What is presented to the husband of a daughter, goes to the woman, whether her husband
live or die; and, after her death, descends to her offspring.*" City Dacca, May 29th, 1818. Macn. H. L. Vol. II. Ch. 8. case 9 (pp. 216, 217.)

Q. A person of the Brahminical class, having separated himself from his brothers, while living apart from them, acquired thirty-one bighás and eleven káthás of rent-free land, and by succession to his son, he became proprietor of sixty-three bighás and seven káthás of the same description of landed property which the son had obtained by gift. Having enjoyed these estates for some time, he died, leaving a widow, who succeeded him; and she, while her husband’s brother’s sons were living, made a gift of a portion of the landed estate to her own brother. She mentioned in the deed of gift, that the land was bestowed for the spiritual benefit of her late husband. In this case, is the gift legal?

R. It does not appear from the question what quantity of the land was given; but the gift of a small part only of the estate, for the spiritual welfare of her deceased husband, is legal; because, although it is laid down in the Dáya-bhága and other books of law, that the widow of a deceased man who left no male issue, may only enjoy his property until her death, she is entitled to make a gift of a small part of it for the benefit of her husband, which, if she do, the gift should be upheld as legal.—Zillah Dinagepore, April 15th, 1820. Macn. H. L. Vol. II. Ch. 8. Case 37, (pp. 244, 245.)

Q. On the death of the original proprietor, his widow made a gift of his entire property to her two grandsons, while their mother, that is the daughter, was living. In this case, is the gift binding and good?

R. Supposing the widow, during the life-time of her daughter, to have made a gift of the whole property of her husband which devolved on her at his death by law of inheritance, without the express consent of her daughter, to her two grandsons, the gift is illegal, as it is a settled rule that the widow has only the right to enjoy her husband’s property with moderation until her death. This is consonant to the doctrines cited in the Dáya-bhága and other law tracts.—Zillah Nuddea, 8th March 1926. Macn. H. L. Vol. II. Ch. 1, Section 3, Case 8, (p. 48.)
Mahodá and Brindában versus Kalyá́́ni and two others.

Cases

I. Jugal-kishóor under a deed of gift executed in his favour by the widow of a Zemindar, and also as her heir, claimed the estate, which on the Zemindar’s death had devolved to the widow. Adjudged that by the Hindu law the gift made by the widow of the Táulk left by her husband could not avail, a widow having no power to alienate the estate which she inherited from her husband, and (which at her death must devolve on her husband’s heirs.) But the plaintiff, a collateral relative of the husband, having shown that he was the heir at law, judgment passed, on this ground, in his favour; or rather in favour of his daughters, his heirs; he having died before the suit was decided.*—14th of March 1803. S. D. A. Rep. Vol. I. p. 62.

The Vyavasithá delivered in the case was “A gift, by a widow, of the whole estate of her husband, is invalid: but that a gift of a moderate portion of his property, made by the widow, with a view to his spiritual benefit, may be valid.”

Nanda Cumár and another versus Rájendra Náráyan.

II. Claim to the estate of a deceased proprietor by his kindred as heirs was dismissed, on proof that the defendant, who affirmed that he was legally adopted by, and received the estate in gift from, the proprietor’s widow, was entitled to it not under the deed of gift from the widow, since she could not alienate the estate left by her husband, but as her husband’s adopted son and legal heir.—2nd of December 1805. S. D. A. Rep. Vol. I. p. 261.

* A reference to the following passages of Júmána-cátána will confirm the correctness of the grounds on which the decision of this cause rested. (Ch. 11, Sect. 1, § 56, and Sect. 6, § 9, and summary or recapitulation p. 225.) It has been declared by the law officers of the Courts in other suits, that a widow’s gift of the estate to the next heir is good in law, though she be restrained from making any other alienation of it. This opinion, though not founded on any express passages to that effect in books of authority, seems reasonable; as such a gift is a mere relinquishment of her temporary interest, in favor of the next heir. It may, however, happen, that the person who would have been entitled to take the inheritance at her decease, may be different from the one who obtained under the gift or relinquishment to him as presumptive heir; and if the title be either preferable or equal, it may invalidate such gift in whole or in part.—Note by Mr. Colebrooke.
Case of Krishna-mani Debâ, widow of Gobinda-prasâd Lâhuri deceased, instituted this suit to recover from Must. Umá Debi, the mother, and the three brothers of her husband, one-fourth of the family property real and personal. The defendants pleaded in appeal that the plaintiff had no claim to share at all, because she had left her husband's family and had resided in her father's house; and because the cognizance of the claim was barred by the rule of limitation, which should be reckoned from the year 1236, when her husband, quitting his paternal dwelling, had gone to reside in his father-in-law's house, and that, even supposing his death to have occurred, as asserted, on the first of Bhadoon (Bhâdra) 1238, a period of more than 12 years had elapsed from that date to the institution of the suit.

By the Court.—Messrs. Reid, Dick, and Jackson. The points for consideration are as follows:—

1st. Is the cognizance of the suit barred by the rule of limitation? The suit was instituted on the 14th of August 1843, or 30th of Sawun (Srâban) 1250. The plaintiff asserts that her husband died on the 20th of August 1831, or 5th of Bhadoon 1238. Even assuming that the date of his death was, as asserted by the defendants, the 1st of Bhadoon or 16th of August, the period of 12 years had not expired by two days. The Court reject the plea of the defendants that the commencement of the action must be reckoned, not from the day on which the petition of plaint was filed (14th of August 1843,) but from that on which, after due permission obtained from the Sudder Dewany Adawlut for the trial of the suit in Zillah Mymensingh, part of the property being situate in Rajshahye, it was placed for trial on the file of the principal Sudder Ameen of Mymensingh; and rule that the cognizance of the suit is not barred.

2nd. Is the plaintiff debarred from suing by the fact of her having chosen to reside in the family of her father instead of in that of her husband? On this point the decision of the Privy Council in the case of Kâshi-nath Basâk versus Hara-sundari Dâsi and another, (see page 85, Morton's Reports,) is, in the opinion of the Court, quite decisive.
as to the right of the plaintiff to sue.*—29th of July 1846. S. D. A: Vol. VII. pp. 270—272.


I. Plaintiffs declare that they succeeded in getting a decree against Subhadrá's husband Jíban-krishša Bábú, for Rupees 57,599-7-5, that after his demise she, in lieu of that debt, executed a bill of sale on the 17th Asḥár 1249, and sold certain estates of her husband, which defendants, on the pretext of bendámí deeds alleged to have been executed by Jíban-krishša in their favor, withhold from plaintiffs. Plaintiffs pray, therefore, for possession and wasilat.

In appeal, several pleas were urged for appellants, of which the third is, that the sale to them, on which plaintiffs claim, is illegal according to Hindu law; the widow, who sold to them, having no power to alienate property inherited from her husband. Fourth, the sale, with respect to the two properties in question, is illegal, because the seller was not in possession. Fifth, the decree, for the amount of which the estates were sold, was collusive, and consequently the sale, and therefore it is invalid. Sixth, the sale and gift of appellants were bona-fide real transactions, and not fictitious, and therefore should be upheld.

On the part of respondents it was argued that, the sale having been made to pay her husband's debts, by the widow, was perfectly legal. The parties were Hindus, and, according to the Shástra, a sale even without possession is valid. There was no collusion. The plaintiffs had obtained a decree against the widow's husband, which he appealed and died. The widow then withdrew the appeals and sold the estate to avoid heavier liabilities from continuing to contest the demand. And that the sale and gift of appellants have been clearly fictitious and fraudulent to evade demands, and therefore were properly declared invalid by the Principal Sudder Ameen.

On the third plea, the following question was put to the pandit of the Court: 'Have Hindu widows the power to alienate the whole of

* See Jadu-mani Dosses v. Khotra-mohun Seal cited in the Section on maintenance.
the landed property inherited from their husbands, for payment of their husbands' debts, without the consent of the next heirs to the said property, relatives of the husband?

To which the pandit answered: 'A Hindu woman, who has inherited the property left by her husband, may alienate the whole of it to pay his debts, because, so inheriting her husband's property, she is bound to pay his debts.'

The pandit refers for his authority to Nārada Muni, as stated in the Digest of Jagan-nātha, and to be found in Colebrooke's translation, (pp. 315 and 316, volume I.) 'If the assets of the husband have been received by the wife, she must pay the debts.' And again: 'and so must a debt be paid by a childless widow, who has accepted the care of the assets, even though she have not accepted the burden of the debts, for she is successor to the estate.'

The fourth plea is utterly untenable under the Hindu law, as is evident from the whole tenor of the law on rescission of sale, laid down in the Digest of Jagan-nātha, especially the two texts of Nārada cited therein (pp. 317 and 318, volume II. Colebrooke's translation.) "When a vendible thing, sold for a just price, is not delivered to the purchaser, this is called non-delivery of a thing sold, a title of a judicial procedure." And again: "He then, who having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immovable, to pay for any subsequent damage, as the loss of a crop or the like; and, if movable, for the use and profits of it." Here are express penalties for non-delivery, but not a word about invalidity on that account.

The fifth plea is one which cannot be adduced by appellants, as they are not heirs, and cannot call in question the propriety and honesty of the acts of the widow.

The Court, therefore, deeming the claim of the respondents valid, and the sale and gift of appellant fictitious, dismiss the appeal with full costs, and affirm the decision of the Lower Court.—Sudder Dewanny Adawlut, 15th July 1847.

* This however is not the translation of the text of Nārada Muni, but of Jagan-nātha's comment thereon. See Coleb. Dig. Vol. I. pp. 315, 316.
Bábu Harish-chander Roy, (defendant,) appellant, versus Nanda-lál Dutt, and after his death Gobinda-chander Dutt (plaintiff,) respondent.

And Ráñi Anna-púrṇá and another (defendants,) appellants, versus Gobinda-chander Dutt (plaintiff,) respondent.

11. Ráñi Anna-púrṇá sold to the plaintiff half her interest in Pergunnah Kadleigh, &c. She put him in possession, but subsequently adopting a son, Harish-chander, (defendant,) and guardians being appointed, the latter were put in possession of his purchased property by an order of the (civil) court, in consequence of his (plaintiff’s) name not having been registered in the collector’s office. The plaintiff therefore sues the Ráñi, her adopted son, and his guardians, for possession, and Mr. Courjon, an ijárádár, for mesne profits.

The guardians and the adopted son, in answer, pleaded that the Ráñi had no power to alienate.

The Ráñi admitted the sale, but asserted that it was made under conditions which have not been fulfilled, and that the consideration money was not paid.

Mr. Courjon contended, that he was not liable for mesne profits any more than any other ryot; that a portion of the property sued for had been bought at a sale in execution by Mr. Nicholai, prior to the suit, which fact was apparent from the plaint. Nevertheless, he has not been included among the defendants, which is a defect fatal to the suit.

The Principal Sudder Ameen gave a decree in favour of plaintiff against all the defendants, excluding, however, therefrom the share purchased by Mr. Nicholai.

The issue proposed by respondent in bar is, that the adopted son, appellant, cannot be heard in denial of plaintiff’s claim so long as his adoption is not proved.

The first issue proposed by the appellant is, that the suit is multifarious in consequence of its being for possession on proof of purchase, and to have an adoption set aside.

Bábu Ramá-prasad Roy for the appellant.—The question of the validity of the adoption was for other heirs of the deceased Ráñi to contest, not for the plaintiff. Plaintiff by introducing this question
proceeded contrary to the opinion expressed in the decision above quoted. The case should, therefore, be nonsuited as multifarious.

Mr. Waller, in answer.—It does not at all follow that the plaintiff should be nonsuited, because he may have introduced a prayer which the Court may hold to be unnecessary.

The Court on his point are of opinion that the suit is unobjectionable, and that the conditional prayer to declare the adoption invalid was not irregularly introduced.

Judgment.—The fact of the sale to plaintiff is admitted by the Ráji, and not deuid by her adopted son. Her right to alienate is, however, contested. There are numerous precedents of this Court ruling that a Hindu widow can only alienate property in liquidation of her late husband’s debts, his shráddha, &c. The question in this case is, whether the sale to plaintiff was for any of the purposes authorized by Hindu law, and whether the proof of the appropriation to those purposes, adduced by the plaintiff, is sufficient to sustain the decree. The bill of sale to the plaintiff sets forth, that it was effected for certain purposes, which are such as are recognized as legitimate causes for alienation of ancestral property by the Hindu law. The chief purpose is liquidation of debts of the late Rájá Rám-krishna. There is no documentary evidence of the Rájá having been indebted at the time of his death; but so long a time had elapsed since his death before this sale, i.e. eighteen years, that it is quite possible, as contended for by respondent’s pleaders, that the Ráji may have renewed her husband’s bonds, and there is oral evidence that this was the case to a certain extent; and there are circumstances shown, from which a fair inference may be drawn, that she was in great difficulties on account of these debts. The debts were paid, and the presumption is, that they were paid from the funds raised by this sale. It would be unreasonable, in the opinion of the Court, to expect from the plaintiff better proof than he has given on this point. We find no distinct averment on the other side, certainly no proof other than negative, that the debts were incurred by the Ráji herself, that she had been guilty of wilful extravagance, and none that she appropriated the money she received in a way other than that for which she ostensibly sold the disputed property. It is not necessary for us to decide whether such proof, if tendered, would have invalidate the sale.
We therefore are of opinion that there is no ground to interfere with the decree of the Principal Sudder Ameen, restoring the plaintiff to the possession of that part of his purchase which had not been previously sold to Mr. Nicholai. We dismiss the appeal of Harish-chander, No. 83, with costs. We amend the Principal Sudder Ameen’s decree in case No. 83, charging costs ratably. S. D. A. Decisions. 13th of April 1862.

Ranji Krishna-mani, Appellant, versus Raja Udwan Singh and Raja Janaiki-ran Singh, Respondents.

III. Ranji Krishna-mani had been left, by the will of her husband Maharaj Bishwa-nath Roy, sole possessor and manager of all his property, and invested with authority to adopt a son. This lady executed a conditional sale in order to prevent the foreclosure of a mortgage made by her husband. The Pandits of the Sudder Dewanny Adawlut declared, that the conditional sale would be legal, supposing a sufficient case of necessity to have been made out. The majority of the Court, admitting that, when the period fixed for foreclosure of the original mortgage drew nigh, there did exist a sufficient case of distress to justify recourse to the above measure, whereby the interest of the son, about to be adopted by the widow, would doubtless be best consulted: and although the measure had not the effect of saving the estate ultimately from alienation, yet it put off the evil day, and steps might have been taken in the interval to avert the loss altogether. For these and other reasons, the sale was held valid, and the property sold was decreed to the purchaser.—24th June 1823. S. D. A. R. Vol. III. p.228.

Ran-chander Sarmoh versus Gangobinda Banerjea.

IV. Gangobinda Banerjea sued to recover possession of his deceased brother’s estate, 7 annas of which were sold, and 9 annas were made over in gift by the deceased’s widow. The Zillah Judge finding from the Vyavastha submitted by the Pandit, that the sale, made by the widow, of a 7 anna share of her late husband’s estate was valid, but that the gift of the 9 anna share was illegal, passed a decree awarding to the plaintiff possession of the 9 anna portion, which defendant Ran-chander was directed to relinquish. This decree was affirmed by the Provincial Court. The Sudder Court held that the widow of a Hindu, who died without issue, has the power of making a gift of a portion (from one to three sixteenths) of her late husband’s property for his spiritual bene-
fit; but such not appearing to the court to have been the object of the gift in the present instance, the claim of the donee was disallowed, and the lower court's judgment was affirmed.

The principal part of the Vyavasthá given in this case is—"A widow having succeeded to the property of her deceased husband has the power of alienating by sale so much of such property (and no more) as may be necessary for the payment of debts contracted by him, for her own subsistence, for the support of her husband's family, and for the performance of his eunocical rites. She may likewise make a gift proportioned to the extent of her late husband's property for the benefit of his soul. And if these objects (viz. payment of debts, expenses of Shrāddha, &c.) cannot be effected without the sale of all the property she has the power of disposing of the whole of it. But she is not permitted to alienate by (gift or) sale the whole or even a part of the property solely at the suggestion of her own will or pleasure.—1st February 1826, S. D. A. Rep. Vol. IV. p. 117.

CASE No. 723 of 1859.

Prasanna-kumár Majumdár and Dwárká-náth Biswás (objectors) petitioners versus Kálí-chander Choudhuri, opposite party.

Cases bearing on the vyavasthá No. 40.

I. This appeal is against the order of the Principal Sudder Ameen of Mymensing, ordering the sale of the Tálik Amognugur, in execution of a decree held by Kálí-chander Láhuri against Ráṣi Bhuban-moyí. In this case the decree was against the Ráṣi personally, and when she died, she is said to have been in possession of the property; but only under a life-interest. After her death, it is alleged, the Tálik went to the minor Jogendra-náráyan's estate and now forms part of it. It is stated, that the Tálik was once attached as the property of Bhuban-moyí, but this is not shewn, or that that attachment prevented the property passing absolutely on Bhuban-moyí's death from her to the appellant, the minor. There was no concern on the part of the minor with the decree-holder's claim against Bhuban-moyí, and we are, therefore, of opinion that the principal Sudder Ameen is wrong in summarily ordering the Tálik, now held by the minor, to be sold in execution of the personal decree against Bhuban-moyí. We accordingly reverse his order, with costs.—The decree-holder is at liberty to

CASE NO. 459 of 1859.

Shaksádah Mahomed Rabí-uddín, petitioner, versus Rózi Prosánno-moyí Debí, opposite party.

II. The purchaser of the decree has now appealed to this Court. He urges that it is clear from a decision of this Court, dated 21st February 1859, that all the property left by Rózi-maşi's husband, is to remain in her possession during her life-time; that the minor, consequently, could not have any property yet, nor could he have purchased any; that the interest of the widow Rózi-maşi is salable, and should be sold in satisfaction of the decree against her, on the supposition that the decree is a personal one; but that, in fact, the decree is against the estate of her, (Rózi-maşi's,) husband, and any property belonging to it should be sold.

We are quite clear that the decree against Rózi-maşi, pp. 405-411, did not bind the estate of her husband, but was only a personal one against her, and there can be no doubt that she is entitled to the possession and beneficial interest in all her husband's property during her life-time. Such being the case, and admitting for argument's sake, that the property attached, was property of that nature, we think in accordance with the ruling of this Court in the case of Káli-kánta Láburi versus Golak-chander Choudhuri, that the interest belonging to her, is not of a salable nature under Hindu law, but that if the purchaser of the decree desires to realize his costs from profits of the property, he should move the Court for the sequestration of the rules for that purpose.

Under the view expressed above, we reject the present appeal with costs.—6th March 1860. S. D. A. Decisions. pp. 358, 359.


See also the case of Bangshi-dhar Hájré v. Thákur Priyág Singh, decided on the 5th September 1862 and printed at page 114 of S. D.
A. R. Vol. VIII. The substance thereof is as follows:—A Hindoo woman in possession of property derived from her husband, in which she had a life-interest, contracted debts entirely personal, and for purposes of her own: held, that her husband’s heirs, on whom the estate devolved at her death, are not responsible for her debts, which can be recovered only from her separate property.—Vide Morley’s Digest, Vol. I. p. 285.

**Case no. 463 of 1853.**

*Hafizun-nissá Begam, (defendant,) Appellant, versus Rádhá-binod Misser, (plaintiff,) Respondent.*

**Case no. 464 of 1853.**

*Shekh Zinat-ullah for self and as guardian of Nyámuat-ullah and others, versus Rádhá-binod Misser.*

**Case no. 501 of 1853.**


**Case no. 509 of 1853.**

*Shekh Mutí-ullah and others, (defendants,) Appellants, versus Rádhá-binod Misser, (plaintiff,) Respondent.*

**Case no. 510 of 1153.**

*Shekh Ahmad-ullah, (defendant,) Appellant, versus Rádhá-binod Misser, (plaintiff,) Respondent.*

**Case no. 511 of 1853.**

*Aminá Khálún, (defendant,) Appellant, versus Rádhá-binod Misser, (plaintiff,) Respondent.*

**Cases**

Plaintiff alleges that his maternal grandfather, *Lukshmi-nároyan Roy* sold the whole of his own share in the ancestral property to *Dharani-dhar Gossein* on the 5th Aughran 1204; subsequently his maternal uncles *Róm-dulál Roy* and *Nanda-lál Roy*, having re-purchased the same from the said *Gossein*, remained in possession of their respective shares during the life-time of both of them; that on the demise of *Róm-dulál Roy*, his widow, *Tárá-maṇi*, who was childless, had a dispute with her husband’s brother regarding the property left by her deceased husband, and even-
tually obtained a decree for possession of her husband's right on the 18th March 1824; that Tárá-mañi is only entitled to the enjoyment of that property during her life-time without any power to alienate it either by gift or sale; that notwithstanding that the said property is of such value as to be sufficient for all necessary expenses and for the performance of all necessary religious ceremonies, she, Tárá-mañi, with a view to defraud plaintiff, and having become of unsettled mind and careless of family duties, sold to the different defendants portions of her husband's property; that other portions plaintiff, with a view of preventing their alienation, purchased of the said Tárá-mañi in his own name and in the name of his wife, Bishnu-moyi, and is still in the possession of them; that certain mehals were on the point of being sold in order to realize a decree obtained by Kripá-moyi Debi against Tárá-mañi; but that at the intervention of plaintiff the sale was stopped, and the amount of the decree was ordered to be paid from profits of the said properties; that proclamation was issued for farming the said attached estate, and that Kripá-moyi Debi was anxious to get the farm, but plaintiff being apprehensive of injury to the property, obtained a farm of them himself, by which means these mehals have remained in his possession; that plaintiff, on the 19th March 1841, instituted a regular suit against Kripá-moyi for the cancelling of the sale of Turuf Kunkuniya, and the Principal Sudder Ameen of Dinagpore, on the ground that a childless widow like Tárá-mañi, had no power to alienate the rights of the heirs of her husband, either by gift or sale, passed a decree in plaintiff's favor on the 20th September 1841, which ordered that plaintiff should remain in possession of the mehal and give his maternal aunt, Tárá-mañi, maintenance during the term of her natural life; that this decree was confirmed in all the Courts up to the Sudder; that subsequently plaintiff instituted ten suits against the remaining purchasers for possession of the properties illegally sold by Tárá-mañi Debi, and for the cancelling of the deeds of sale, and that all the suits were decreed in plaintiff's favor by the Principal Sudder Ameen, on the ground that a childless widow has no power to alienate the property of her deceased husband; that in two of these ten suits, no appeal was preferred, but that in the remaining eight appeals were preferred and the judge reversed the decision of the Principal Sudder Ameen upholding the sales made by the childless widow Tárá-mañi; that on plaintiff's preferring special appeals to the
court of the Sudder Dewanny Adawlut, the Court admitted the appeals, and, on the 3rd July 1847, remanded the cases; that the object of plaintiff in instituting those suits was a just one, *six. to prevent the alienation of the property during the life-time of his maternal aunt; that she, however, having now renounced all connection with worldly affairs, and having abandoned the habits and duties of a Hindu widow, and having entered the Banopesto (properly, Bānaprastha) Boirāghi order and gone on a pilgrimage, has become civilly dead; plaintiff therefore being now entitled to enter into possession as heir, institutes this suit for possession of all the properties sold without warrant of Hindu law by his maternal aunt, Tārā-maṇi, with mesne profits from the date of suit and for the cancelling of the deeds of sale, for a declaration of his absolute right to the estates which by purchase from Tārā-maṇi and by decree of court, are in his possession conditionally, and also to those now under attachment and for the removal of the attachment therefrom.

The Principal Sudder Ameen of Dinagepore was of opinion, that plaintiff was undoubtedly heir to the property left by her maternal uncle Rām-dulal Roy; that it was proved by a petition filed by Tārā-maṇi, before the judge on the 27th Jeyt 1255; that she had become a boirāghi, and had gone on a pilgrimage; that this petition was confirmed by the evidence of witnesses adduced by the plaintiffs, who state that she had renounced the world, become a Byrāghi, and gone on a pilgrimage, and that defendant had offered no evidence to the contrary. The Principal Sudder Ameen also cited passages from pages 131 and 233, of the second volume of Macnaughten’s Hindu law, to the effect that “retirement from the world is, according to the Hindu law, a species of civil death, on which, as in the case of natural dissolution, the right of the heirs begins immediately to exist.”

The Principal Sudder Ameen consequently gave plaintiff a decree for all the property claimed by him with the exception of Tārsf Kus-kusniya with costs.

Against this decision six appeals have been preferred to this Court by different defendants in the Court-below; for the sake of convenience we have considered them all together, and have formed the following issues as arising out of them.

*First.*—Whether the present suit discloses such a new ground of action as to entitle plaintiff to bring it?
Secondly.—Whether plaintiff's allegation that Tárá-maní has become a byrághin, be proved or not; and even if it be, whether plaintiff has a right to bring a suit like the present, whilst she is living?

Thirdly.—Are the deeds of sale, filed by Haftzun-missá Begam and Iswhar-chander Roy, appellants, which were executed by Tárá-maní Debi and Nanda-lál Roy, and attested by plaintiff, good as against the plaintiff, or not?

Fourthly.—Are the deeds of sale, filed by Shekk Dhiyáuallah, Shekk, Akhadullah, Aminó Khátún, Shekk Mujíddullah, and Muttullak, appellants, executed by Tárá-maní Debi and Nanda-lál Roy, or by Tárá-maní, with the consent of Nunda-lál, valid, or not?

Fifthly.—If the deeds, alluded to in issues three and four, be defective in execution and therefore invalid, are they not valid in consideration of the object for which the sales were made?

Sixthly.—Is the sale of Harish-chander-pore in execution of a decree obtained by Lakhmir Khán, the husband of Aminó Khátún, appellant, for arrears of Government revenue due by Tárá-maní Debi valid, or not?

On the second issue, the Court was of opinion that as the appellants had not denied the fact of Tárá-maní having become a byrághin in the Court below, it was not competent to them to do so; now looking, moreover, to the evidence before it the Court agreed with the Principal Sudder Ameen in thinking that it proved satisfactorily the plaintiff's allegation and showed that the widow Tárá-maní had become a tirthabashi (properly, tirtha-básíini) and had renounced the world. The Court was unable to discover that any particular acts are enjoined by the Hindu religion to render a renunciation of the nature valid, and as to the particular ceremonies necessary for her becoming a byrághin; they are so unimportant that absence of notice of them cannot weaken the evidence to the fact of Tárá-maní having become a byrághin. The Court, therefore, was of opinion that the objections raised in the second issue to the present suit are invalid.

The Court then directed the pleader to proceed and argue the merits of the appeals as involved in the last four issues.
With reference to the point of law raised in the third issue, we are of opinion on the authority of the cases of Mohan-lal Khan versus Rangi Shiromani, reported at page 32 of the second volume of the Select Reports of this Court, and Deb-chand Sahu and others versus Hardyal Sing, reported at page 204 of the Decisions for 1849, that on a sale of property by a widow, if the deed of sale be signed or attested by all the heirs living at the time of the execution of the same, the consent of the subscribing parties to the act set forth in the deed is by Hindu law presumed therefrom; this presumption is not, however, conclusive but is rebuttable, it is competent to an heir whose name is upon a deed to show that it is there for some other purpose than that which the law presumes; that the signature of the plaintiff in this case is upon the deeds of sale produced by the appellant Hafizun-nissa Begam and Ishwar-chander Roy, is satisfactorily proved before us, by the evidence of appellant's witnesses, and plaintiff has neither attempted to show that the signature is a forgery, or that if genuine, it was there for any particular purpose and for that alone. The pleaders for the plaintiff, it is true, have urged before us that the signature of the plaintiff to the deeds is merely to be considered as the signature of a witness attesting the execution by the parties of the deed in question; but as before remarked, this is not the effect which the Hindu law attributes to the signature of an heir in expectancy appearing upon a deed of sale otherwise valid; and as plaintiff has altogether failed in rebutting the presumption arising according to that law from his act, we are compelled to give to it its full legal significance, and to declare that plaintiff, having by the affixing of his signature to the deeds of sales produced by the appellants, Hafizun-nissa Begam and Ishwar-chander Roy, has consented to the sale of the property claimed under those deeds and is consequently now stopped from calling them in question on any ground whatever save that of fraud. We consider that by the attestation of the plaintiff, he must be presumed to have relinquished all his rights in expectancy to the property, to the sale of which he consented.

On the point of law involved in the fourth issue, we are of opinion from the authorities cited in the margin, that in order to render a sale by a Hindu widow of her husband's property valid, it must be
signed or attested by all the heirs of her husband then living; the execution or attestation by the nearest heirs alone is insufficient;* under this view of the law, the deeds of sale propounded by the appellant in this case, on which the signature of the plaintiff, an heir in expectancy, does not appear, are

We were pressed in the course of argument with case of *Kālī-
Dutt* versus John Mooree and others, decided by the judges of preme Court on the 20th March 1837; in this case to use the f the Report, "the immediate reversioners conveyed to the and the question is whether the sons of these reversioners can conveyance aside, that is to say, whether the sons on the widow (their aunt,) have a reversionary interest indepen-their fathers, the immediate reversioners or not? We think through their ancestors, and must be respectively bound acts;" this case is not similar to that now before us; had the in this suit claimed through Nanda-lāl, whose name appears of the deeds, he would have been bound by the act of Nanda-
ntiff, however, does not claim through Nanda-lāl, but through lāl; consequently, the principle laid down by the learned a the case cited, does not apply to the present; we are con-
y of opinion that as the consent of plaintiff, as heir in ex-
t, then living, was not obtained to the deeds of sale, filed appellants, Shekh Dīyānūtullah, Shekh Ahmadullah, Aminā Shekh Mujidullah and Mutī-ullah, whether they be executed ṭ-mañi alone or by Tūrā-mañi and Nanda-lāl jointly, they that ground invalid.

This is pleaded on the sixth issue, that even if the absence of parties to these deeds render them invalid under Hindu law, cts for which the sales took place were such as to render them under the same code; the purposes for which the sales were were, it is pleaded, the payment of debts incurred by the widow, ment of Government revenue, and in one or two instances for ding of money to *Puri* or *Bindrāban*: the payment of the the widow in this case unless these debts were incurred for

---

1 see Ṣeṣa-mañi *Debi versus Sadāudd-prasanna* Mukerjea S. C. 21st November pera.
the benefit of her husband or under inevitable necessity, that is a necessity not caused by any act of the widow herself, but by circumstances over which she had no control, is not a valid reason for sale under the Hindu law. On reverting to the evidence produced by the appellants whose deeds we have declared invalid, we find these sales took place in consequence of the necessities of the widow either as to payment of her own private debts or law expenses in which the interests of plaintiff were disregarded, or of Government revenue. We are entirely of opinion with the Principal Sudder Ameen that the profits arising from the properties left by Tārā-māni’s husband, in which she enjoyed a life-interest, were amply sufficient for all proper expenses of a Hindu widow. Under these circumstances, we cannot consider the payment of the widow’s debts, whether caused by litigation or otherwise, a valid cause for the alienation of her husband’s property, neither can we consider the payment of revenue, even were such payment proved to our satisfaction, which they are not, such a necessity to warrant that step; had the appellants been able to show that by any circumstances of inevitable necessity such as storm or draught the widow had been compelled to resort to the sales of property to them, it might have been a question, whether under the opinion set forth at page 283 of the second volume of Macnaughten’s Hindu law such sale was consistent with the Hindu law regarding the disposal of property left to her by her husband or not; as it is the necessity, if there were any necessity, was one entirely of her own causing, and clearly not within the necessities contemplated by Hindu law. As to the sums which are alleged to have been sent to Puri and Bindrāban, we are not satisfied with the evidence on the point, and even if that evidence were sufficient to establish the fact, we do not think that the sale of property would have been warranted for that purpose alone, her own income being amply sufficient to meet them; we are of opinion therefore that the object for which these sales took place was not such as to render them valid under Hindu law, and though subscribing to the doctrine laid down by this court in the case of, Harish-chander Roy, appellant, versus Nanda-lal Dutt and Gobinda-chander Dutt, respondents * that purchasers from Hindu widows are not required to prove actual appropriation of the proceeds to the ostensible purposes for which the sales took place, still we require

that those ostensible purposes shall be recognised as legitimate by Hindoo law, which is not the case in the bills of sale now produced before us.

On the sixth issue, we entirely concur in opinion with the Principal Sudder Ameen that the sale of the property Turuf Harish-chander-pore, which was sold in execution of a decree obtained by Lakhmir-Khan, the husband of Amin Khotun, appellant and others, against Tarti-mani Debi for the amount of a loan of money made to her in order to pay the Government revenue due on that estate, cannot, under the precedent of Raja Harender-norayan Roy versus Gonesh-prosad Bhad* be sustained; the plaintiff in this case not being liable for the personal debts of the deceased’s widow and her interest in the estates being limited to that of a tenant for life.

Under the view of the whole case expressed above, we reverse with costs, against the respondents, so much of the Principal Sudder Ameen’s decision as declares that the deeds of sale produced in the case by the appellants—Haftus-miss Begam and Ishwar-chander Roy invalid, and we pronounce the sales made under them to be good and valid under Hindoo law; with reference to the sales made under the deeds of sale filed by the appellants, Shekh Diyamatullah, Shekh Ahmadullah, Amin Khotun, Shekh Mujidullah and Muttiullah, and also of the sale of Turuf Harish-chander-pore made in execution of a decree obtained by Lakhmir Khan, the husband of Amin Khotun appellant against Tarti-mani Debi, we pronounce them invalid under Hindoo law, and confirm the decision of the Principal Sudder Ameen regarding the properties covered by them.—The 21st of July 1856. S. D. A. Decisions, pp. 595--606.

Mohan-lal Khan, Appellant versus Rangi Shiromani, Respondent.

CASE Rangi Shiro-mansi sued Anand-lal Khan to recover from him the seminary of purgunnas Midnapore, &c. setting forth in her plaint, that the defendant who was her servant had imposed upon her a hebah-namah, or deed of gift, as a mukhtiar-namah, or power of attorney, which she had intended to execute; that under this hebah-namah, thus fraud-

---

* Vide.—S. D. A. D. decisions for 1856, pp. 396, 397.
ulently obtained, the defendant had caused her (plaintiff's) zamindary to be entered in the public records in his own name, had entered into engagements for the revenue and received possession from the collector.

The defendant stated, in answer, that the Ráni (plaintiff) had executed the hebah-nímah in question with a full knowledge of its contents, and had repeatedly acknowledged it to the collector, who had in consequence put the defendant in possession; and that she was now induced by the arts of those about her, to set up this claim. The hebah-nímah purported to make over to the defendant her zamindary and household property, without any reservation or provision for her own support. It bore date the 30th of June 1800, and was registered in the Zillah Court on the 31st July following. The zamindary in dispute had devolved to the Ráni on the death of her husband, Ajit Singh, which occurred in 1756. In the year 1800, when the above deed had been executed, the landed property of the Ráni was under the superintendence of the Court of Wards, as the estate of a disqualified zamindar. The Pandit of the provincial Court, in answer to a reference made to him by the Senior Judge, delivered a vyavasthá declaring "that if Ráni Shrimati had made a gift of the estate, which devolved to her, on the death of her husband, without the consent of the surviving heirs of the husband, such gift was invalid." Subsequent to the delivery of this vyavasthá (the appellant) Anand-lál filed a ló-dási, or deed of relinquishment, bearing the signatures of Bala-bhadra Bánjá, Rádhá-gobind Bánjá, and Kuchil, maternal first cousins of the deceased Rájá. This deed purported that the subscribing parties had, at the times of the execution of the hebah-nímah, acquiesced in it; that they now did so and renounced all claim to the estate. No other proof of the consent of the heirs of Ajit Singh was offered by the appellant. The Senior Judge of the Provincial Court, on the ground that the deed of gift executed by the Ráni not having been executed with the consent of all the heirs of Ajit Singh surviving at the time, was void and of no effect, passed a decree, adjudging that the estate in dispute should be placed under the custody of the Court of Wards for the benefit of the Ráni, that the defendant should account for the net proceeds of the estate from the date of the Ráni's plaint. Mohan-lál having succeeded to the rights of his brother Anand-lál who demised while the suit was pending before the Provincial Court, preferred an appeal from the above decree to the Sudder Dewanny
Adawlut. It was admitted by the appellant, that when the hebah-námah was executed, there were living five maternal first cousins of Rájó Ajit Singh. Four persons now came forward, calling themselves relations and heirs of Rájó Ajit Singh viz. Shyámánand Mahá-pátra and Gaj-ráj who stated themselves to be descended in the direct line from Lakshyan Singh, the great grandsire of the great grandfather of Ajit Singh; and Ráp-charaṅ Mahá-pátra and Róm-charaṅ Mahá-pátra, who stated themselves to be descended from a brother of Lakshyan, and who had presented a petition to the Zillah Judge, praying that Ráñi Shiro-mani might be prevented from making a donation of her estate to the injury of the legal heirs, which she was then about to do, influenced by the fraud and intimidation of Ánand-láli. The respondent gave in a list of twenty-nine persons, included in the genealogical table exhibited by her, as sa-gotra, or paternal kinsmen of Ajit Singh, and stated to be then alive. The only evidence adduced by the appellant, in support of his claim was the aforesaid ló-dávi. One of the persons executing the ló-dávi positively denied all knowledge of the document and others pleaded ignorance of its contents and duress.

The Sudder Court was satisfied from the opinion of their law officers in this and several other cases, from the authorities quoted by them, and the rules laid down in the Dáya-bhága (a work of the first authority in the Bengal system of law,) that the consent of the husband's paternal kindred, as being the legal guardians and advisers of the widow (though not in all cases the nearest heirs,) is necessary (except under certain special circumstances) to the validity of an alienation by the widow (even with the consent of the husband's maternal kindred) of any part of the estate devolving to her, on her husband's death. But it appeared in this case that the deed of gift executed by the respondent in favor of Ánand-láli Khán, had been not only without the consent of her husband's paternal kindred, but in opposition to their remonstrances; that there was no sufficient motive for any gift such as the Hindu law requires in such cases, and that therefore the deed (of gift) under which the appellant claimed to hold the zamindary was void ab-initio. Under these circumstances, the Court, without taking evidence respecting the authenticity of the deed of relinquishment exhibited, passed a decree, affirming the decision of the Provincial Court, and dismissing the appeal with costs. 31st August 1812. S. D. A. R. Vol 11. p. 32.
The greater part of the Vyavasthā delivered in this case is. 1st—On the death of the widow, the survivors being the sons of the Rajá's mother's brothers, the descendants of Lakhhyān Singh (the great grand- sire of the great grandfather of Rajá Ajit Singh,) and the descendants of Lakhhyān Singh's brother, the sons of his mother's brothers, will be legal heirs, in default of nearer kinsmen; and if the deed of gift executed by the Rajá be invalid, they will be entitled to succeed to the semindary left by Ajit Singh. 2ndly,—Although the respondent (the widow,) with full information and free will, may have signed the deed of gift, and in pursuance of that deed Ánand-lál the donee, may have obtained possession of the property given, and although the sons of the maternal uncles of Rajá Ajit Singh (who, after the Rajá's death, will be entitled to succeed to the estate of her husband) may have voluntarily executed the deed of relinquishment exhibited by the appellant, still the donation specified in deed of gift is contrary to law, and is not valid; because the consent of two of the Rajá's and maternal uncle's sons does not appear to have been obtained; because the deed of gift does not bear the attestation of those heirs who are alleged to have subscribed the deed of relinquishment; because a moiety (or a portion) is not reserved for the obsequies of the deceased proprietor, as the law requires; because a gift of the whole landed estate and household effects is contrary to legal usage, which authorises only suitable gifts in proportion to the wealth of the party; and because the deed of gift does not contain the permission of the Rajá's paternal kindred, who were then and are still living. They, who have voluntarily signed the deed of relinquishment, cannot legally claim in opposition thereto; but they who have been compelled, are not bound by it. 3rdly,—As the gift specified in the hebah-nómah for the whole landed estate and household effects is not legal, the assent of the heirs of Ajit Singh thereto is of no avail.

In an opinion delivered by the Pandits in the case of Ráp-charaederland Mahá-pátra versus Ánand-lál Khán above mentioned, it was expressly stated that the Rájá's gift to the latter was not sanctioned by her husband's family, it is utterly null and void; that what has been so given must be considered as not given; and that the restoration of property held under a void gift should be enforced by the ruling power.
No. CXXIV.—11th August 1819.


Case bearing on the Vyavasthās Nos. from 24 to 30, 36, 38, 40, to 44 & 47.

Judgment of East, C. J.—This cause was heard before the Court on the 5th December 1814, when the Court, amongst other things, decreed that Bishwa-nāth Basāk (the succession to whose property was in litigation in the suit,) having died without issue, the defendant, Hara-sundari Dāsi, as his widow, was, by the Hindu law, entitled to an interest for her life in the whole of his immovable or real estate, and to an absolute interest in the whole of his movable or personal estate, and directed an account of the personal estate. There were subsequent proceedings upon a re-hearing and upon a supplemental bill filed for the purpose of establishing certain testamentary papers, the proof of which failed altogether; and upon the account taken before the Master, the personal estate of Bishwa-nāth Basāk was, on the 7th November 1815, reported by him to amount to Rs. 274,700 in Company’s securities at six per cent, together with some other personal estate of small amount. On which an order was made on the 8th April 1816 for transferring those sums to the account of Hara-sundari, and a final decree passed. A bill of review has been filed (on the 9th September, 1818,) assigning for error in the interlocutory decree of the 5th December 1814, that Hara-sundari, the widow of Bishwa-nāth Basāk, is not, by the Hindu law, entitled, as declared by that decree, “to an absolute interest in the whole of his movable or personal estate, or any part thereof, nor to any interest in the same, other than for the term of her natural life, subject to the several powers, restrictions, and qualifications, in and by the Hindu law in such case ordained and provided.” Other errors are assigned in the decree of the 8th April 1816; that as Hara-sundari Dāsi is a childless widow of a Hindu, and incapable again of contracting wedlock, and the complainants are the next legal heirs and representatives of her deceased husband, Bishwa-nāth Basāk, and, as such, entitled to the whole of his estate and property on her decease, the Company’s securities and cash, standing in the books of the Accountant-General to the credit of Bishwa-nāth Basāk, ought not to have been decreed to be transferred generally to her credit, but only in trust for her, or for her use and enjoyment, during her natural life, subject to such powers, restric-
tions, and qualifications, as are by the Hindu law provided. And also for that it is not ordered by either of the said decrees that Harasundari Dasi should abide or reside with and under the care, protection, and guardianship of the complainants, who, as surviving brothers of Bishwa-nāth Basāk, are alone entitled, by the Hindu law, to the care, guardianship, and protection, of his widow.

Upon the last ground of error the Pāṇḍita have uniformly answered that the widow was not bound to live with her husband's relative. If a widow, from any other cause than for unchaste purposes, cease to reside in her husband's family, and take up her abode in the family of her parents, her right would not be forfeited. Here there was a good cause at the time: viz. the extreme youth of the wife, and no pretence was made of the prohibited cause.

The great question which has been raised is, whether the widow, takes the personal estate devolving on her at the death of her husband, absolutely. I shall consider.

1st.—What right the husband had over his real and personal estate.

2ndly.—What interest the widow takes in either by devolution, on his death without male issue, according to the text writers on the Hindu law, and other Hindu authorities, either native or British.

3rdly.—How far the decisions which have taken place in this Court have decided the question.

It seems to be clear, from the Dāya-bhāga, that a Hindu may dispose of his self-acquired property, whether real or personal, as he pleases. And although, in partition of ancestral property between a father and his sons, he is limited to take a double, or two shares; yet in some passages (of Dāya-bhāga) it seems to be admitted that "he is competent to sell, give, or abandon the property." In the case of Nīmadī-charan Mallik in this Court, in 1807 or 1808, Mr. Compton stated that it was considered, that "though a Hindu could not properly dispose of patrimonial estate without the consent of his sons, yet if he do, the disposition is valid."

The Pāṇḍita in this case (in which they differed from five of their brethren,) declared that a gift of money or other movable property made by the widow other than such as is allowed by law, is invalid,
and may be recovered back, not only by the next heir, but by herself, and in which they differed from the Sudder Pandits, who thought the gift valid as against herself, though not against the next heir.

In the MS. judgment of Mr. Harington upon the case of Bhaiyó Jhó, in 1812, in the Sudder Dewanny Adawlut, which I have seen, after observing that the "Ratnókara and the Chintá-mañí are works of the highest authority in Tirhoot," he concludes, after stating the passages: "From these passages of most undoubted authority it is evident that the widow has power to consume, or to give, or sell, in her life-time, the movables which may have devolved upon her by the death of the husband, but has no power over the immovables beyond a moderate and frugal enjoyment of them. After her death, the estate, which she enjoyed frugally during her life time, shall pass to the heirs of her husband." Mr. Colebrooke, in his letter of the 27th of February 1812, addressed to Mr. Harington upon the subject of Bhaiyá Jhó's case, then in judgment, says "that this doctrine, which he considered to be that of the Mithilá school, is no doubt at variance with the doctrine of the Bengal school, which controls the widow even in the disposal of personal property." And Mr. Harington, in his MS. judgment in the case before referred to, only states "that the Ratnókara and Chintá-mañí are unquestionable works of the highest authority in Tirhoot:" thereby seeming to admit of a different doctrine in Bengal, as affirmed by Mr. Colebrooke.

It further appears to be the general understanding of the persons acting in, or connected with, that Court, that the widow takes, in Bengal, the same estate with the same power of disposition over it, in the personality as in the reaity, devolving to her by the death of her husband without sons; and that this has always been considered to be the rule in the Court. The same opinion was communicated by the two Pandits of that Court, who agreed in all points with our Pandits, except as to the invalidity of a gift of movable or immovable property by the widow, as against herself. The general doctrine of all these Pandits (with the exception I have mentioned) is to be found in the answer given by the Court Pandits upon the argument of this case.* They rest their doctrine upon the authority of the Déya-bhóga and

---

* The doctrine aforesaid has been published in Sir Francis Macnaghten's Considerations on the Hindu Law, and quoted in the following judgment of the Privy Council.
Dóya-tattva, as overruling, in Bengal, the authority of the Ratnákara and the Chintá-mañi, not denying the authority of these last mentioned books when uncontradicted or uncensured by the former; but affirming that the Ratnákara and Chintá-mañi are contradicted and overruled by the Dóya-bhága and Dóya-tattva upon the point in judgment; which latter books, they affirm, give only a life interest to the widow in both the real and personal estate, with the power of disposition as to both for the benefit of her husband's soul, observing moderation, but without authority to dispose of either for worldly purposes, unconnected with religious purposes, without the consent of her deceased husband's kinsmen.

The five Pándits, who were opposed to the others, affirm the authority of the Ratnákara and Chintá-mañi in giving to the widow an independent authority over the movable part of her husband's estate, though not over the fixed property other than for her life; and they deny that this doctrine is contradicted, or declared inadmissible, by the Dóya-bhága or Dóya-tattva, in neither of which latter, they say, is the subject particularly noticed; and they contend that, by these last mentioned authorities, the donation of the property by the widow is valid, though they admit that the donor incurs moral guilt by it.

This narrows the inquiry to this point, viz. whether the Dóya-bhága (which is admitted by all to be the ruling authority for Bengal) does invalidate the disposal of personal property by the widow at her pleasure (in which case it could not properly be decreed to her absolutely,) or whether she has the absolute right of disposition over it by law, however she may incur religious or moral guilt by such disposition for worldly purposes of her own. She may, in general, dispose of strí-dhan as she pleases, except immovable property given her by her husband, in which she has only a life interest, and upon her death it descends to his heirs, and not to her own paternal heirs; and except immovable property, given to her by her own parents in her maiden state, which always goes to her brother if she die without issue. (Dá. bhá. Ch. IV. Sec. 3. para. 12.)

In Jagan-nátha's Digest (3 Coleb. Dig. 457—466,) an opinion is advanced, that "though a widow is prohibited from conveying away immovable property by her own voluntary act, and for purposes of her
own, yet the donation may be valid." It must have been against this doctrine that Mr. Colebrooke, in the letters referred to touching this subject, states, that "it appears, on inquiry and research, not to have been sanctioned by any previous author of note, nor, as is believed by any writer whomsoever. It is, on the contrary, in opposition to the whole current of authorities, both in and out of Bengal."

Mr. Colebrooke, in combating Jagan-nátha's illustration "that the gift by a widow should not be held void, while that made by a daughter, before whom she is a preferable heir, is valid," observes that "according to Jiméta-váhana's doctrine, which extends the restrictions to daughters and mothers, as well as to wives, the daughter is precluded from giving away an estate which comes to her from her father, and the mother, one which comes to her from her sons. It has actually been adjudged by the Sudder Dewanny Adawlut in the case of a mother."

In order, therefore, to avoid gross inconsistencies and contradictions, and yet to reconcile these doctrines with each other, I can find no better way than to consider her as having the entire right of property vested in her, both in the movable and immovable estate; for there is no distinction between them taken in the books in respect of the husband's estate devolving upon her as heir,* as there is in the case of male succession to ancestral property, and as there is, also, in respect of real property given to her by her husband in his life-time, which she is declared incapable of alienating from his heirs, as she may alien the personal property so given. But that she is legally prohibited from wasting the property so vested in her, and cannot make away with it except for certain allowable and declared purposes, without the consent of her husband's next male heir; and further, considering that, even in the use and enjoyment of the property so vested,

---

* The Court Pośdits indeed, in their answer to the seventh question, seem to put movable and immovable property upon the same footing,—and for my part, so far as a widow is concerned, I have been unable to trace any distinction between them in the Hindu law. I took great pains to come at the best information which was attainable, during the time we were considering this question after having examined the Pośdits in Court; and I was satisfied at last, that in the case of a widow, there is not any distinction made by the Hindu law, between movable and immovable property in her hands.—Macmillan's Cons. H. L. p. 18.
she is religiously and morally enjoined to use moderation, and to take the advice of her husband’s kindred in her manner of living, but is under no legal disability if she do not take or follow such advice.

It is not alleged that there was any decision on the point before the Kār-farmā’s case, which was decreed by this Court in November 1812, the form of decrees before that having been to decree to the widow the movable and immovable property of her husband generally, without distinguishing between the two, or stating the quantity of the estate decreed in either: that was the first cause in which the realty was decreed to the widow for life, and the personality absolutely. The complainants Ishwar-chander Kār-farmā and Nārāyaṇī Dāsī filed their bill for an account and partition against Gobind-chander Kār-farmā and others; and in that case Rām-maṇī who was the widow of Sūrat-chander, was upon the partition, decreed entitled to two shares, one in her own right as widow and another as heir of her son, who had died after his father; and she was decreed a life estate in the realty, and absolute in the personality, as in the present decree. This decision is stated to have been made upon great consideration, after much argument, and in conformity with the opinion of the Court Paṇḍits; and at first sight it appears as if this Court had expressly adopted the doctrine of the Ratnākara and the Chintā-maṇi as applicable directly to Bengal. But the distinction which has been taken, that that was a case of partition, and not of simple succession, supported as that distinction is by the opinion of our own Paṇḍits, which would reconcile that decree with the opinion of Mr. Colebrooke, and with the opinion of the Sudder Dewanny Paṇḍits, upon the doctrine of the widow’s succession, has induced me, after much hesitation and anxious investigation, to conclude that the Court decided the Kār-farmā’s case upon the ground of partition, and not of simple succession. One of the two Paṇḍits who advised the Court in that case is still in his office; and to questions put to them upon this point, they have both answered thus:—

6th. Q. Is there any difference in the quantity of interest which a woman takes in property by partition with sons, and that which she takes by the death of her husband without issue?

They first answered; “There is no difference in the interest so taken.” But they immediately afterwards corrected themselves, and stated thus:—
A. "There are different opinions on this subject. Some Pāṇḍitaś affirm that property obtained by a woman sharing with her sons is to be considered as stri-dhan, separate female property, as her own, over which she has perfect uncontrolled authority. There are opinions both ways. We are of opinion that the most eligible mode would be to consider it stri-dhan, it being more in the nature of a gift than what she succeeds to in her own right."

7th. Q. Does this answer apply equally to movable and immovable property?

They first answered, "It applies equally to both movable and immovable property." But then they added, "Fixed property given by husband to a wife is not alienable by her." Now if the estate which a woman receives on partition, either as a widow or as a mother, is to be considered as in the nature of Strī-dhan, it has been already shewn that she takes it absolutely, but cannot alien the real estate, though given to her by her husband in his life-time, but that after her death it shall go to his heirs: a fortiori, therefore, she could not alien his real property, which simply devolved upon her at his death. The Kār-farmā's case has decided that the estate, which both a widow and a mother takes in the property of her husband on partition, follows the rule which is expressly given by the Dāya-bhāga as to Strī-dhan, namely, that she takes the personalty absolutely, but the realty only for life. The decision of the Sudder Dewanny Adawlut in Bhaiyā Jhā's case took place very recently, before the decision of this Court in Kār-farmā's case; and it is not improbable that the recollection of the two decisions (by both of which the personalty was given to the widow absolutely, and the realty for life only) might be blended together, so as to leave an impression upon the minds of those who heard of them at that time that the doctrine of Ratnākara and the Chintā-maṇi was applied generally to Bengal. But when it is now ascertained that the one decision was made in respect of lands in Tirhout, where those books give the rule; and that the other was made in a case of partition, where the Dāya-bhāga gives the same result, though by a different rule; the variant conclusions in the different cases will not be inconsistent nor the doctrine of the two courts contradictory.

The next case, that of Shib-chander Basu (Bose) versus Guru-prasad Basu and others, decreed finally on the 7th August 1818, was
also a case of partition,* and is, therefore, capable of receiving the same answer. To the two other cases which here occurred, the one of Srimati Jaga-mohini Dasi widow of Madan-mohan Gupta versus Ram-mohan Gupta, decreed on the 23rd June 1814, and the other of Jupada Raur, versus Jagan-nath Thakur, decreed on the 7th February 1816, the same answer cannot be given. But those cases passed without argument at the bar, upon a full understanding that the point had been before expressly decided by this Court, upon the misunderstanding, as it now appears, of the Karsarmas case, the misblending and misrecollection of that with Bhaiyá Jhá’s case.

The result, then, of the whole is this, that unless the authority of the Ratnakara and Chitá-maní are to give the rule on the point in judgment in Bengal, the decree in its present form is erroneous, and it appears, by the general opinion of the Pandits of the Sudder Dewanny Adawlut, and of our own, supported by the authority of Mr. Colebrooke, and in effect by the decisions of the Sudder Dewanny Adawlut, in Bhaiyá Jhá’s case, and other cases, where the doctrine of those books has been applied to cases on the specific ground of their arising in Tihoot, that the same doctrine does not apply to Bengal, being in opposition to the doctrine of the Dáya-bhága, which is the ruling authority in the province, and it seems that, by the Dáya-bhága, no distinction is taken between the reality and personalty as to the quantum of the widow’s estate, but whole appears to be given to her absolutely for some purposes, though restricted in her disposition as to others; and therefore she takes more than a life estate in the reality for those allowed purposes, and less than an absolute estate in the personalty for other and different purposes; and if this be so, the decree cannot be supported in its present form. But at present it is sufficient to overrule the demurrer, without specifying the particular form in which the decree may ultimately be drawn up.

The decree passed after this, is to be found in the following judgment of the Privy Council, q. v.

Note by Sir. E. H. East.—There was an appeal against this decree; and, soon after it was pronounced, an application was made to the court to direct the payment over to the widow of the whole of the

personal estate in the hands of the Master, together with the accumulation of interest.

This, however, was opposed by the next male heir Káshi-náth Basák and by Kamal-maṇi.

The Court, after ineffectual endeavours to adjust matters equitably between the parties, made an order for the payment to her of the interest accumulated, which they thought not more than adequate to her just allowance for her rank and fortune (supposing she was not also entitled of right to the actual possession of the principal also, which it was thought as well to retain during the appeal;) and also gave liberty to her counsel to apply for the possession of the principal to a judge in chambers after the decree was signed. But ultimately the principal sum was retained on account of the appeal, and certain costs were paid out of it.—S. C. East’s Notes, No. CXXIV. Morley’s Digest, Vol. II. pp. 198—220.

**JUDGMENT:**

At a Meeting of His Majesty’s Most Honorable Privy Council. The 24th of June 1826.

*Káshi-náth Basák & Ramá-náth Basák . . . . . . . . . . . Appellants.*

*Hara-sundari Dási & Kamal-maṇi Dási . . . . . . . Respondents.*

**LORD GIFFORD,—**

This is an appeal against a decree of the Supreme Court of Judicature in Bengal. *Bishwa-náth Basák,* who was one of the three sons of *Madan-mohan Basák,* the appellants (defendants) *Káshi-náth Basák* and *Ramá-náth Basák* being the two other sons, under the will of the father was entitled to one third part of the movable and immovable property, of which he died seised. *Bishwa-náth* died an infant under the age of sixteen, leaving a widow (*Hara-sundari Dási*) also an infant, but without any issue. After the husband’s death, the suit was instituted by *Udoy-chánd Basák,* the next friend of the widow, seeking to have the property belonging to the husband.

This case came on to be heard in the Supreme Court, in the month of December 1814, and they pronounced the following decree: “That *Bishwa-náth Basák* being, at the time of his death, an infant under the age of sixteen years, could not by the Hindoo law make a will,
bequeathing his estate and property to the defendants after his death; and that the paper-writing exhibited in this case on behalf of the defendants marked with the letter A, is not the will of the said Bishwa-náth Basák;” and the court did further declare, that the said Bishwa-náth Basák having died without leaving issue of his body, the complainant, as his widow, is by the Hindoo law entitled to an interest for her life in the whole of his immovable or real estate, and to an absolute interest in the whole of his movable or personal estate.

A Bill of revivor was filed by the appellant, and errors were assigned (by them) in this decree and in the decree of 8th April 1816. The suit came on again to be heard in the Supreme Court, and from the question involved in this cause, at the hearing, the Paññīts of the Court were called in and examined as to certain points arising out of the Hindoo law; and, after their examination, the Supreme Court, on the 11th of August 1819, decreed—“That the several decrees of the 5th December 1814, and 8th April 1816, should be rectified, and that the respondent Hara-sundari Dāsī should be declared entitled to the real and personal estate of her husband, to be possessed, used, and enjoyed by her, as a widow of a Hindoo husband dying without issue, in the manner prescribed by the Hindoo law.”

Upon this decree, an appeal was brought before His Majesty in Council, and from the importance of the case, their Lordships have been desirous to obtain all the information they could procure in this country upon the subject. They have been recently favored with a very correct note of what took place in the Supreme court at Bengal upon the discussion of the question, and with the judgment pronounced by the Chief Justice on the occasion.

With respect to the last supposed ground of error in this decree, which was assigned by the appellants, viz. that it was not ordered by either of the decrees, that Hara-sundari Dāsī should reside with or under the care, protection, and guardianship of the appellants, who, as the surviving brothers of Bishwa-náth Basák, were alone entitled to have the care, protection, and guardianship of his widow; the Paññīts appear to be unanimous in the opinion, “that a Hindoo widow is not bound to live with her husband’s relatives.” I will read the answer to the eighth question put, which will explain what the Hindoo law is upon the subject; and in that, it appears, the other Paññīts
who were called in, agreed, or at least, they expressed no objection to the opinion pronounced. The question put is this: “If a widow, for a just cause, ceases to reside with the family of her husband, does she thereby forfeit her right of succession to her deceased husband’s estate?” The answer is: “If a widow, from any cause other than unchaste purposes, ceases to reside with her husband’s family, and takes up her abode in the family of her parents, her right would not be forfeited.” Now, it was not pretended in the case, that she had removed from the protection of her husband’s family for unchaste purposes; she was only of the age of 14 years at the death of her husband; his brothers were young men; and she thought it more prudent and decorous, to retire from their protection and live with her mother and her family, after the husband’s death: therefore it appears quite clear, from the answers given by the Pandits, that she did not forfeit the right of succession to her husband’s estate, on account of removing from the brothers of her late husband; that they had no right to insist upon her not withdrawing from them, in order to put herself under the protection of her mother; and therefore there appears to be no foundation, to that extent, for the appeal.

Now the authorities cited in the Court below, and before their Lordships, were two books of great authority, the Viváda-chintá-maṇi, and the Vivéda-ratnákara, with two other books, called the Dáya-bhága and the Dáya-tattva, said to be the leading authorities in Bengal, in which part of India this question arose. Whether we refer to them or to the opinion delivered by the Pandits, I say, all of these authorities concur in this proposition, that whatever may be the extent of power and control, over the movable or immovable property of the deceased husband, she is entitled to the possession of both, and cannot be deprived of it by the husband’s relations.

I will refer to some of the answers of the Pandits which confirm the proposition. They are first asked: “If a Hindu widow succeeds to the property of her husband dying without male issue, what interest does she take in his immovable property, and what interest in his movable property?” They say: “According to the Dáya-bhága and other Shástrás prevalent in Bengal, there is no distinction in this instance between movable or immovable property; the widow has a life interest in both.” They are asked: “Has a widow so succeeding, an absolute
interest in the property of her husband, either movable or immovable?"
Answer: "She has not an absolute interest in such property.—She has not an uncontrolled interest in that property. She can do nothing of her own authority." (See Cons. H. L. p. 18.) Q. "Has a widow, so succeeding, a right to the possession of the movable property to which she has so succeeded?" A. "The widow, so succeeding, has a right to the possession of the movable property to which she has succeeded, subject to the control before mentioned." That relates to the control on the part of the relations of the husband, if she attempt to dispose of the property in a manner the Hindu law will not allow. The fifth question is: "Have the relatives of the husband any right to take such property out of her possession?" A. "They cannot dispossess her of that property, but they can control her in the use of it." The sixth question:—"Is there any difference in the quantity of interest which a woman takes in property by partition between her sons, and that which she takes by death of her husband without issue?" The answer is: "There is no difference in the interest so taken. There are different opinions on this subject; some Pandits affirm, that property obtained by a woman sharing with her sons, is to be considered as stri-dhan (separate female property) of her own, over which she has perfect uncontrolled authority; there are opinions both ways.—We are of opinion, that the most eligible mode would be to consider it stri-dhan, it being more in the nature of a gift, than what she succeeds to in her own right." There were four other Pandits afterwards examined, and they concur in the opinions of the Pandits of the Court, except as to the extent of the dominion which the widow has over the whole of the movable and immovable property; but they concur with respect to the possession: they do not disagree with the other Pandits on the subject of possession. If therefore that part of the personal property in question which was in the Supreme Court and which principally occasioned the litigation, instead of being there, had been in the hands of the widow, the appellants, as it seems, according to the Hindu law, could not have taken it from her.

It has been argued, however, that, if she have only a limited interest in the personality, she ought not to have the possession, but that it ought to be secured for those who may become entitled to it after her death, or what may remain of it after having disposed of any part of
that property, in the way she is authorised to do by the Hindu law. But the answer to this argument appears to be this,—that is not the Hindu law, but, on the contrary, the widow of the deceased husband is the person who by the law is entrusted with the possession of that property, without restriction; and no case has been produced to shew, that the right has ever been interfered with, according to the Hindu law, or any attempt to dispute it in any court of judicature. We think, therefore, that the Hindu widow, by the Hindu law, is entitled to the absolute possession of the property.

With respect to the extent of the widow's interest, and the right of dominion over it, considerable difficulty might arise, if the authority of the books I have first mentioned, the Chintá-mañi and the Ratnákara, prevailed in Bengal. It would seem, that they would warrant the decree, that she was entitled to an absolute right in the movable property, and a life-interest only in the real estate; but the Pândits say, that the authority of the Ratnákara and the Chintá-mañi is overruled by the Dáya-bhága and Dáya-tattva, in which no distinction is made between movable and immovable property, that for many purposes she has an absolute interest in both properties. I will now read the other part of the answer to the first question, and to which I before referred. The question is, "If a Hindu widow succeed to the property of her husband dying without male issue, what interest does she take in his immovable property and what in his movable property?" The answer is, "According to the Dáya-bhága and other Shástras prevalent in Bengal, there is no distinction in this instance between movable and immovable property;—the widow has a life interest in both, and is entitled to the enjoyment of the same, and to dispose of the same by gift, mortgage, sale, or otherwise, for the benefit of her departed husband's soul, even without the consent of her husband's kinsmen; in so doing, she will observe moderation,"

(the Court-Pândits explained the word moderation, used by them, to mean generally moderation in expenditure; other Pândits, present, say: moderation in diet and clothing: (See ante, p. 47) The Court-Pândits proceed—"She has no authority whatsoever to dispose of the property by gift, and so forth, for worldly purposes, unconnected with religious purposes, without the consent of her husband's kinsmen; if she does, such act is invalid. Religious purposes include a portion to a daughter, building temples for religious worship, digging tanks, and
Dāya-tattva, as overruling, in Bengal, the authority of the Ratnākara and the Chintā-māṇi, not denying the authority of these last mentioned books when uncontradicted or uncensured by the former; but affirming that the Ratnākara and Chintā-māṇi are contradicted and overruled by the Dāya-bhāga and Dāya-tattva upon the point in judgment; which latter books, they affirm, give only a life interest to the widow in both the real and personal estate, with the power of disposition as to both for the benefit of her husband's soul, observing moderation, but without authority to dispose of either for worldly purposes, unconnected with religious purposes, without the consent of her deceased husband's kinsmen.

The five Pāṇḍits, who were opposed to the others, affirm the authority of the Ratnākara and Chintā-māṇi in giving to the widow an independent authority over the movable part of her husband's estate, though not over the fixed property other than for her life; and they deny that this doctrine is contradicted, or declared inadmissible, by the Dāya-bhāga or Dāya-tattva, in neither of which latter, they say, is the subject particularly noticed; and they contend that, by these last mentioned authorities, the donation of the property by the widow is valid, though they admit that the donor incurs moral guilt by it.

This narrows the inquiry to this point, viz. whether the Dāya-bhāga (which is admitted by all to be the ruling authority for Bengal) does invalidate the disposal of personal property by the widow at her pleasure (in which case it could not properly be decreed to her absolutely,) or whether she has the absolute right of disposition over it by law, however she may incur religious or moral guilt by such disposition for worldly purposes of her own. She may, in general, dispose of stridhan as she pleases, except immovable property given her by her husband, in which she has only a life interest, and upon her death it descends to his heirs, and not to her own paternal heirs; and except immovable property, given to her by her own parents in her maiden state, which always goes to her brother if she die without issue. (Dā. bhā. Ch. IV. Sec. 3. para. 12.)

In Jagān-nātha's Digest (3 Coleb. Dig. 457—466,) an opinion is advanced, that "though a widow is prohibited from conveying away immovable property by her own voluntary act, and for purposes of her
own, yet the donation may be valid.’ It must have been against this doctrine that Mr. Colebrooke, in the letters referred to touching this subject, states, that ‘it appears, on inquiry and research, not to have been sanctioned by any previous author of note, nor, as is believed by any writer whomsoever. It is, on the contrary, in opposition to the whole current of authorities, both in and out of Bengal.’

Mr. Colebrooke, in combating Jagannātha’s illustration ‘that the gift by a widow should not be held void, while that made by a daughter, before whom she is a preferable heir, is valid,’ observes that ‘according to Jīmēśa-vāhana’s doctrine, which extends the restrictions to daughters and mothers, as well as to wives, the daughter is precluded from giving away an estate which comes to her from her father, and the mother, one which comes to her from her sons. It has actually been adjudged by the Sudder Dewanny Adawlut in the case of a mother.’

In order, therefore, to avoid gross inconsistencies and contradictions, and yet to reconcile these doctrines with each other, I can find no better way than to consider her as having the entire right of property vested in her, both in the movable and immovable estate; for there is no distinction between them taken in the books in respect of the husband’s estate devolving upon her as heir,* as there is in the case of male succession to ancestral property, and as there is, also, in respect of real property given to her by her husband in his life-time, which she is declared incapable of alienating from his heirs, as she may alien the personal property so given. But that she is legally prohibited from wasting the property so vested in her, and cannot make away with it except for certain allowable and declared purposes, without the consent of her husband’s next male heir; and further, considering that, even in the use and enjoyment of the property so vested,

* The Court Pāṇḍita indeed, in their answer to the seventh question, seem to put movable and immovable property upon the same footing,—and for my part, so far as a widow is concerned, I have been unable to trace any distinction between them in the Hindu law. I took great pains to come at the best information which was attainable, during the time we were considering this question after having examined the Pāṇḍita in Court; and I was satisfied at last, that in the case of a widow, there is not any distinction made by the Hindu law, between movable and immovable property in her hands.—Mack. Cases II. v. 10.
she is religiously and morally enjoined to use moderation, and to take
the advice of her husband's kindred in her manner of living, but is
under no legal disability if she do not take or follow such advice.

It is not alleged that there was any decision on the point before the
Kär-farmá's case, which was decreed by this Court in November 1812,
the form of decrees before that having been to decree to the widow the
movable and immovable property of her husband generally, without
distinguishing between the two, or stating the quantity of the estate
decreed in either: that was the first cause in which the realty was
decreed to the widow for life, and the personality absolutely. The
complainants Ishwar-chander Kär-farmá and Náráyañi Dásti filed their
bill for an account and partition against Gobind-chander Kär-farmá
and others; and in that case Rám-mañi who was the widow of Sárat-
chander, was upon the partition, decreed entitled to two shares, one in
her own right as widow and another as heir of her son, who had died
after his father; and she was decreed a life estate in the realty, and
absolute in the personality, as in the present decree. This decision is
stated to have been made upon great consideration, after much argu-
ment, and in conformity with the opinion of the Court Pandíts; and
at first sight it appears as if this Court had expressly adopted the
doctrine of the Ratnákara and the Chintá-mañi as applicable directly
to Bengal. But the distinction which has been taken, that that was a
case of partition, and not of simple succession, supported as that distinc-
tion is by the opinion of our own Pandíts, which would reconcile that
decree with the opinion of Mr. Colebrooke, and with the opinion of
the Sudder Dewanny Pandíts, upon the doctrine of the widow's suc-
cession, has induced me, after much hesitation and anxious investiga-
tion, to conclude that the Court decided the Kär-farmá's case upon the
ground of partition, and not of simple succession. One of the two
Pandíts who advised the Court in that case is still in his office; and to
questions put to them upon this point, they have both answered thus:—

6th. Q. Is there any difference in the quantity of interest which
a woman takes in property by partition with sons, and that which she
takes by the death of her husband without issue?

They first answered; “There is no difference in the interest so
taken.” But they immediately afterwards corrected themselves, and
stated thus:—
VYAVASTHÁ-DARPANA

A. "There are different opinions on this subject. Some Pandits affirm that property obtained by a woman sharing with her sons is to be considered as stri-dham, separate female property, as her own, over which she has perfect uncontrolled authority. There are opinions both ways. We are of opinion that the most eligible mode would be to consider it stri-dham, it being more in the nature of a gift than what she succeeds to in her own right."

7th. Q. Does this answer apply equally to movable and immovable property?

They first answered, "It applies equally to both movable and immovable property." But then they added, "Fixed property given by husband to a wife is not alienable by her." Now if the estate which a woman receives on partition, either as a widow or as a mother, is to be considered as in the nature of Stri-dhan, it has been already shown that she takes it absolutely, but cannot alien the real estate, though given to her by her husband in his life-time, but that after her death it shall go to his heirs: a fortiori, therefore, she could not alien his real property, which simply devolved upon her at his death. The Kár-farmā's case has decided that the estate, which both a widow and a mother takes in the property of her husband on partition, follows the rule which is expressly given by the Dāya-bhāga as to Stri-dhan, namely, that she takes the personality absolutely, but the realty only for life. The decision of the Sudder Dewanny Adawlut in Bhaivyā Jhā's case took place very recently, before the decision of this Court in Kár-farmā's case; and it is not improbable that the recollection of the two decisions (by both of which the personality was given to the widow absolutely, and the realty for life only) might be blended together, so as to leave an impression upon the minds of those who heard of them at that time that the doctrine of Ratnākara and the Chintā-mānī was applied generally to Bengal. But when it is now ascertained that the one decision was made in respect of lands in Tirhoot, where those books give the rule; and that the other was made in a case of partition, where the Dāya-bhāga gives the same result, though by a different rule; the variant conclusions in the different cases will not be inconsistent nor the doctrine of the two courts contradictory.

The next case, that of Shib-chander Basu (Bose) versus Guru-prasad Basu and others, decreed finally on the 7th August 1813, was
ly house is her proper abode; that she ought to live with her husband's relations; but she may live elsewhere without penalty, provided she does not change her residence for unchaste purposes. Her purposes are known to herself alone; and her practices will be regulated by her inclination. Freed from restraint,—surrounded by parasites,—possessing wealth,—exposed to temptation,—unused to liberty,—ignorant of the world,—and conceiving all happiness to consist in the indulgence of her own immediate desires, can it be hoped or believed that she will prove a faithful trustee for the heirs of her husband, or that they can have any thing in the nature of security for a succession to their rights? For certain purposes, a reduction of the capital is said to be allowed. Be it so. Is this to be left to the will of her who has no discretion,—or the discretion of those who have an interest in her prodigality? I do not recommend innovation; far from it. I desire to adhere to the law in its substance; and to give every body that which he is entitled to claim; but if law be not adapted to times, it will be lost both in spirit and in principle. If one be entitled to the immediate, and another to the ultimate, enjoyment of property, it is surely reasonable and just that they should have equal protection according to their several rights. It is admitted that the widow has a right, for life, to the produce of her husband's property. Supposing that property to consist of money, the question is, has she or has she not, a right to possession of the principal? Let us say that she has. It then becomes us to look back to the time when this right was conferred, and to consider the effect of the law by which it was accompanied. If we do so, we may be satisfied that the right was but nominal, that the possessor was under control; and that the expectant was invested with a power sufficient for his own security. One party being deprived of his security, is it consistent with reason or justice that the right which was given subject to such security should still be retained? In what respect is the widow aggrieved by a denial of possession? Without possession she will receive all that she can lawfully use, but will be prevented from dissipating that which is lawfully to devolve upon another. By possession, her right is not enlarged. It will give her the power of doing irreparable wrong. The reversioner's right is as well founded as that of the widow,—and I think it will be admitted, that the law ought to be so administered as to render it consistent with the preservation of both. "Regard is to be had to the civil and religious usages of Hindus." This is the statute law
of England,—and, if the pujātis are not unanimous, a great majority of them certainly declare that the widow may, for religious purposes, or for the benefit of her husband’s soul, dispose of his property, without the consent of his relations.

Every thing considered, it is not only reasonable but indispensable to the maintenance of right that these expenditures should be under some control; and where can this control be so properly placed as in courts of justice? Those who administer the Hindoo law, ought to cast off their own prejudices, and attend to the usages which they are bound to regard. If they act in this temper, looking upon disbursements for religious purposes as necessary, and taking care that the next in remainder shall not be defrauded under a pretext of their performance, the rights and privileges of all will remain uninvaded. The reversioner must submit to all proper deductions; and simplicity will no longer be wrought upon by imposture, to his prejudice. I admit, and in considering this subject I am bound to admit, that the purposes for which a widow may expend the wealth of her husband, are religious. My own sentiments and opinions are quite out of the question;—but if it be not denied that the interest of him in remainder is as well worthy of the law’s protection, as the interest of him in possession,—if the right of both to their several interests be equal, they surely ought to be equally secured. It is impossible that rights can be contrary, and opposite, to each other; and to say that one has a right to a thing, which another has a right to deprive him of, is absolute nonsense in itself, and in terms a downright contradiction.—Cons. H. L. pp. 93—97.

Kál-chánd Dutt versus John Moore and others. 20th March 1837.

Case bearing on the Vyavasthás Nos. 43, 44.

Ryan C. J. delivered judgment:—The whole question turns upon a Hindu widow’s right to convey, the reversioners having previously conveyed to her in fee. That a grant made by a widow for her own life is good has been decided in this Court. The widow Ráma-priyá Dást has survived her husband’s immediate heirs or reversioners. In this case, the immediate reversioners conveyed to the widow, and the question is, whether the sons of these reversioners can set this conveyance aside; that is to say, whether the sons on the death of the widow (their aunt) have a reversionary interest independent of their fathers, the immediate
reversioners, or not. We think they claim through their ancestors and must be respectively bound by their acts. On these grounds we think the title valid, and there must be a verdict for the defendant. Grant and Malkin, judges, concur.—Fulton, Vol. I. p. 76.


Case bearing on the Vyavastha No. 43. The plaint set forth, that Binod-nârâyana Thâkura died, leaving a widow Nârâyana Debi and a daughter Râm-mani Debi; that Nârâyana succeeded to her husband's property, and gave her daughter in marriage to the defendant Krishna-chander Sâṇḍyâl, and then went on a pilgrimage, that Krishna-chander Sâṇḍyâl took possession of the property in virtue of a deed of gift alleged to have been executed by Nârâyana Debi and that on the death of his wife Râm-mani and Gobind-chander Sâṇḍyâl his minor son (the only issue he had by her,) he married the defendant Satya-bhâmâ Debi, and made a gift of the property to her. The plaintiffs sue as the existing heirs of the original proprietor, the gift by Nârâyana Debi of her husband's ancestral estate, being, as alleged by them, illegal.

The Zillah Judge dismissed the claim after taking a bewustha (vavyastha) from the Paṇḍit of the division.

The plaintiffs then appealed to the Sudder Dewanny Adawlut. The case was heard by Mr. Braddon, who referred the following question for the answer of the Paṇḍit of the Sudder Court:—"A Hindoo died leaving a widow and daughter, the widow succeeded to his property and gave her daughter in marriage, and then made a gift of her husband's estate to her daughter and son-in-law, and put them in possession of the same; the daughter died before her mother, leaving a minor son, whose name on her death was recorded jointly with that of his father as proprietor of the estate; the son also died before his grandmother; and his father then took possession of the entire estate, and transferred it by gift to his second wife. Under these circumstances, is the gift by the widow of her deceased husband's property to her daughter and son-in-law, valid, according to the law as current in Bengal. It is to be observed that the plaintiffs made no objection at the time to the gift by the widow." The Paṇḍit replied,
that in default of sons, grandsons, and great-grandsons, the widow
inherited her husband’s property; and that after her death, the daugh-
ter would inherit. In such case the gift by the widow to her daughter
(who might be expected to have children) and her daughter’s husband
of the property derived from the same husband, the father of the
daughter, was valid according to the law as current in Bengal; be-
cause the gift made to the daughter, was made with the consent of
the party, first entitled to inherit after the widow-donor’s death; and
as for that part of the gift which was made to the daughter’s husband,
that is the same as if it had been made to the daughter, and is also
legal; but if it should be considered that the daughter’s husband had
any right separate from his wife in the gift, the legality of that may
also be upheld in the present instance as a gift made to a brahmin
(brāhmaṇa). The deed must further be upheld as legal, because of no
opposition or objection to it having been made, at the time of its exe-
cution, by the heirs of Binod-nārāyaṇ Thākur.

On receiving this opinion, Mr. Braddon confirmed the decree of

IN EQUITY.

Srimati Jádu-maṇi Debi versus Sārotā-prosanno Mookerjea, Srimati
Bimalá Debi, Srimati Shyámá-sundarí Debi, Ashtoš Dey
and the East India company.

Khélá-rám Mookerjea died intestate in the year 1817,
possessed of considerable real and personal estate,
and leaving two sons Khál-prosanno Mookerjea and
Boidyo-náth Mookerjea, and two widows, Srimati
Droupádi Debi the mother of Khál-prosanno Mookerjea and Srimati
Anando-móyi Debi the mother of Boidyo-náth Mookerjea. The two
sons inherited the estate of Khélá-rám Mookerjea and remained jointly
possessed of it until the death of Boidyo-náth Mookerjea, who died
in the year 1822, without issue, leaving an infant widow who died in
the year 1830. Anando-móyi Debi then became the heiress of Boidyo-
náth Mookerjea. On the 5th of March 1830 Anando-móyi Debi in con-
sideration of a yearly allowance of Co’s Rs. 4800 to be paid to her by
Khál-prosanno Mookerjea, granted and assigned to him all her interest
in the estate of Boidyo-náth Mookerjea, in the year 1843, Anando-
móyi Debi went on a pilgrimage to Benares, where she lived till her
death. Her allowance was regularly paid to her by Kāti-prosanno Mookerjea so long as he lived, and by his representatives after his death. In February 1844, Kāti-prosanno Mookerjea died leaving two infant sons—the defendant Sārodā-prosanno Mookerjea and Tārā-prosanno Mookerjea deceased; and two widows, the defendant Srīmatī Bimalā Debi the mother of the defendant Sārodā-prosanno, and the defendant Srīmatī Shyāmā-sundari Debi the mother of Tārā-prosanno. Kāti-prosanno Mookerjea by his will, left his real and personal estate to Sārodā-prosanno Mookerjea and Tārā-prosanno Mookerjea jointly, with a gift over to the survivor of them, if either of them should die without male issue, and he appointed Srīmatī Bimalā Debi and Srīmatī Shyāmā-sundari Debi his executrices and Ashutosh Dey and Pramatho-nāth Dey his executors. The executrices took possession of all the testator's property. On the 23rd of August 1849, Tārā-prosanno Mookerjea died without issue, but leaving a widow, Srīmatī Jádu-maṇi Debi the plaintiff.

Disputes having arisen as to the rights of the parties interested in the estate of Kāti-prosanno Mookerjea, the whole of his estate was by the consent of his representatives made over to the Court of Wards.

The plaintiff's case was, that Tārā-prosanno Mookerjea having survived Anando-moyī Debi became entitled to a moiety of Boidyo-nāth Mookerjea's estate, which on the death of Anando-moyī Debi devolved on the heirs then living, Sārodā-prosanno and Tārā-prosanno Mookerjea, and that the assignment by Srīmatī Anando-moyī Debi did not operate to give a divisible interest to Kāti-prosanno in Boidyo nāth's moiety of the estate of Khelā-rām Mookerjea; that the whole estate of Boidyo-nāth Mookerjea was divisible into equal moieties, of which the defendant Sārodā-prosanno Mookerjea was entitled to one moiety, and the plaintiff, as widow and heiress of Tārā-prosanno Mookerjea to the other.

The defendants alleged that Srīmatī Anando-moyī Debi survived Tārā-prosanno and died in September 1849; they also relied on the assignment of the 5th March 1830;—as a surrender of the interest of Anando-moyī Debi to the next heir at the time of such surrender.

The only question of fact related to the time of the death of Srīmatī Anando-moyī Debi, at Benares, and evidence was adduced on both sides on this point.
Jackson. J.—(after stating the facts and commenting upon the evidence.) On the whole then after a careful examination of this conflicting evidence, we have arrived at the conclusion that the defendant's case is untrue, and that Ánanda-moyi died, as the plaintiff represents, in the year 1844:

Káli-prasanna Mookerjea having survived Ánanda-moyi the plaintiff contends that he, as one of the heirs of Boidya-náth living at her death, became entitled to a moiety of Boidya-náth's estate. The defendant relies, however, on the deed of gift or surrender by Ánanda-moyi in favor of Káli-prasanna as taking the property out of the usual course of descent, and making it part of Káli-prasanna's estate, and subject to the limitations of his will. The validity of the deed is therefore the next subject for consideration:—

I think the argument for the defendant on this point is not supported to its full extent by authority, for although it is clear that on the occasion of a widow becoming a byrágáhi, the estate would at once descend to the nearest heirs living at the time, (2 Macnaughten Hindu law, 131, 233, and the case of Hafizun-nisá Begam versus Rádhá-binod Misser,)* yet there is no authority for the unqualified proposition that the widow can by her surrender vest the whole estate indefeasibly in the nearest heirs living at the time of such surrender.

On a review of all the authorities the correct view of the law would seem to be, that a widow's conveyance of the estate to all the nearest heirs living at the time of the conveyance is valid, provided that no other heirs, of equal or superior degree, happen to be in existence at the time of the widow's death. Mr. Colebrooke, in his note to the case of Mahodá versus Kulyáni lays it down thus:—"It has been declared by the law officers of the Court in other suits that a widow's gift of the estate to the next heir, is good in law, though she be restrained from making any other alienation of it. This opinion, though not founded on any express passages to that effect in books of authority, seems reasonable, as such a gift is a mere relinquishment of her temporary interest, in favor of the next heir. It may, however, happen that the person would have been entitled to take the inheritance at her decease, might be different from the one who obtained it

* See ante, pp. 78-80.
under gift or relinquishment to him as presumptive heir; and if the
title of that person be either preferable or equal, it may invalidate
such gift in whole or in part." This passage is inserted verbatim
by Sir Francis Macnaghten, in his remarks on the case of Mahodá
versus Kalyání (see page 309.) And we may therefore presume it
was approved of by him. The case of Bijoyá Debi versus Annapurná
Debi is an illustration of this rule. In another recent case in the
Sudder Adawlut, Rám-dhan Bakhshí versus Panchónan Bose the Court
held, that the nearest class of heirs could alone sue to set aside a
deed executed by the widow, and that a suit by remoter relations
for that purpose, whose interest were merely inchoate, could not
be sustained.

The consent of the heirs is all that is required by the old authorities
(See Dáya-bhága). If the true meaning of the word 'heirs' be all the
persons living who might by possibility be heirs at the subsequent
death of the widow, and it be meant that the consent of all these per-
sons is necessary, the widow would seldom or never be able to convey,
for among so large a class of heirs all of them would scarcely ever be
competent or willing to consent. But I do not think that this is the
correct meaning of the word 'heirs,' and that the term is used in the
old authorities to designate that class of persons only who would
immediately succeed to the estate, if the widow's interest were deter-
mined, rather than all the persons who might, by possibility, become
heirs on the happening of that event.

On the whole then, applying this view of the law to the facts of the
case, I think that Kóti-prasanna Mookerjea was the only nearest or
next heir at the time of the execution of this deed, and that his con-
sent to the gift in his own favour is clearly shewn, and that although
Tórá-prasanna and Sórádá-prasanna were the heirs living at the death of
the widow, yet they were not heirs of superior, or equal, but, on the
contrary, of a remoter degree than Kóti-prasanna, their father, and that
therefore they cannot dispute the validity of the deed, which is valid
according to Hindu law.

I would only in conclusion advert to one other argument. It was
urged that the Hindu law does not give the Hindu widow any power
of accelerating or altering the course of descent. This may be true as
regards acts and conveyances by herself alone, but the observation is
unfounded as regards acts done by the widow with the consent of the heirs, for such acts and conveyances are clearly within the contemplation of the law.

Colvile, C. J.—Upon the question of fact I shall only say that I entirely concur in the conclusion which has been stated by Mr. Justice Jackson, and in the reasoning by which he has reached it. I wish, however, to state my own views upon the other principal issue in the cause, viz. the effect and validity of the instrument of the 23rd of Phalgun, 1236.

I may first observe that there can be no mistake as to the intention of the parties to this instrument. Their intention was obviously not merely to assign all the beneficial interest of Ananda-moyi Debi to Kéli-prasanna Mookerjea, in consideration of the annuity of Rupees 4,800, but to effect an arrangement where by, subject to the payment of the annuity, Kali-prasanna Mookerjea should become absolute owner of the property, just as he would have been by operation of law as the then heir of Boidya-náth, had Ananda-moyi died at the date of the deed. The question is whether such a transaction, the effect of which is to determine the limited interest of the Hindu woman and to accelerate the vesting of the estate of the presumptive heir, is consistent with, or permitted by, the Hindu law. The case of Káshi-náth Basák versus Hara-sundari Dási establishes that the estate of the widow is something higher than a life-estate, that it entitles her to the possession of the property without restriction; and that she has a qualified power of disposition in it the limits of which it is difficult, if not impossible, exactly to define further than by saying that the propriety of any particular exercise of that power must depend on the circumstances in which it is made, and must be consistent with the general principles of Hindu law regarding such dispositions. The cases of Ujjul-maṇi Dási versus Ságar-maṇi Dási, and Hari-dás Dutt versus Rango-n-maṇi Dási, which have established in this Court the right of the reversionary heirs, though their interest is only contingent, to maintain a suit to restrain waste by the widow.

Now, the first observation that suggests itself is, that the reasons for the limitations which the law sets upon the widow’s interest and her disposing power, afford no argument against such a disposition as
that now under consideration. The policy of the Hindu law was not, I apprehend, to keep the estate as long as possible inalienable and subject to a species of entail in favor of persons unascertained, but to prevent the alienation of family property, or, the alienation of a share in a joint and undivided family estate, from taking place either in favor of the widow’s natural heirs, who would generally be other than the heirs of her husband or in favor of strangers, by the gift, or other disposition, of the widow. There is nothing contrary to such a policy in an arrangement by which the widow gives up her right of inheritance in favor of one, with whom, if he out lived her other heirs, no one could come in competition of, one who, if, as here, joint in estate with her husband would, according to the law of some parts of India, take preferably to her. It is, in fact, but another way doing that which in former times was continually done without violence to the letter or spirit of Hindu law. To come now to the authorities. The Dáya-bhága (Chap. XI. Sec. 1, pp. 63 and 64,) and the Dáya-krama-sangraha (Chap. I. Sec. 2, p. 7,) both founded on the earlier authorities of Vrihaspati and Nárada, treat gifts to the relatives of the husband in proportion to the wealth as meritorious, and apparently capable of being made by the widow at her own free will. Gifts to her own relatives can only be made with the consent of the husband’s relatives. These ancient authorities, however, here seem to contemplate only gifts of a portion, not the transfer of the whole estate by her. Generally speaking, alienation of the property either by gift, sale, or mortgage, is justified only by necessity, and requires the consent of the husband’s male relatives, or at least (see Colebrooke’s Digest 465) of his nearest relations. (Vide p. 117.)

The first reported case in which the present question arose is that of Mahadá versus Kalyani. In that case, however, it arose incidentally rather than directly. And although there are undoubtedly passages in the report of that case which, if unqualified, would tend to support the contention of the plaintiff in this case, they seem to me to be rendered of little value by the note appended to the case. If it (that note) expressed only the opinion of so accomplished a Hindu lawyer as Sir William Macnaghten it would be entitled to great respect. But in his advertisement he tells us of the notes appended to the different cases, that they were written or approved by the Judges by whom the cases were decided; and that those explanatory
of intricate points of Hindu law were especially valuable as coming from the pen of Mr. Henry Colebrooke. What then must we gather from the note in question. Why that it had been declared by the law officers of the courts in other suits, that a widow’s gift to the next heir is good in law, though she be restrained from making any other alienation of it; that the opinion was reasonable, but was to be taken with the qualification that the gift might be invalid in whole or in part, if the persons who turned out to be the heirs of her husband at her decease should have a title preferable or equal to that of the donee; and lastly that the Judges who decided the case of Mahalá versus Kalyánsi are not to be taken as having decided any thing adverse to the opinion expressed by the note of which they approved. By a person having a preferable or equal tille to that of the donee, I understand one in the same or a nearer degree of relationship to the husband. The case of Musul. Bijóyá Debí versus Musul. Anna-párjá Debí really does no more than affirm the qualifications imposed by the note on the earlier case on the doctrine that a gift by the widow in favor of her husband’s next heir is good. It does not shake the doctrine itself. On the contrary, the opinion of the Pañdits on which it proceeds is, that she is not at liberty ‘to settle the property on one heir whilst there is a possibility that a co-heir may be subsequently born.’

In the case of Mohan-lál Khán versus Ráñi Shiromání * (also cited for the plaintiff) the gift was to a stranger, it was objectionable in its nature, it was not made with the consent of all the co-heirs of the husband, or of his paternal relatives who, though more remote in the order of succession than his maternal kindred, were held entitled to control the widow’s gift as her legal guardians and advisers.

The case of Nafar-chander Mitter and Rújib Mitter versus Rám-kumár Chatoorjea, seems also to have no bearing on the point now under consideration, except as showing that what is true of a widow inheriting her husband’s estate is, mutatis mutandis, true of a mother inheriting her son’s estate. There the gift to Mánik-lál, which was declared invalid, was to one who was not next heir to the son from whom the donor had inherited.

* See ante, p. 85.
The case before Mr. Braddon reported in the 6th Sudder Dewanny Adawlut, p. 36, is directly in favor of the proposition contended for by the Defendant. And the result therefrom of the older decided cases is certainly not to show that the instrument in question was invalid in law.

There is a case on special appeal at page 457 of the Sudder decisions, for 1849 which, though very imperfectly reported, seems to imply the right of a widow to relinquish the inheritance, in consideration of maintenance, in favor of the next heir. Her power of relinquishment seems also to be assumed in a case reported in the Sudder Decisions for 1850, p. 369.

The MS. case (*Hafsizun-nisâ versus Radha-binod*) recognizes two other propositions which are more or less in favor of the defendant in this case;—1st, that a widow can by adopting a certain from of religious life divest herself of the estate and thus accelerate its devolution on the next heir in her lifetime; Secondly, and this was ruled by this court in *Kâli-chând Dutt versus John Moore*, that a consent to the widow's disposition given by a reversionary heir who afterwards dies in her lifetime is binding on his immediate descendants. Such a rule seems to be reasonable and convenient, since otherwise every disposition by a widow would be in certain circumstances voidable; but it cannot, I think, be put generally on the doctrine of estoppel, since the sons or other descendants of the deceased reversioner claim not through him, or as the representatives of his interest, but, as the nearest collateral heirs of the persons from whom the widow inherited then living. If for example that person had died leaving a widow and two brothers, and one brother only died in the lifetime of the widow, the sons of the deceased brother would not take their father's presumptive share. They would have no part in the inheritance. The whole would go to the surviving brother.

It is true that Sir Francis Macnaghten at p. 309, after quoting his son's note in the case 1 Sudder Dewanny Adawlut Reports 62, draws a conclusion from it which is in the plaintiff's favor, but is, I think, hardly justified. He proceeds on the assumption that the widow's is a mere life estate; that she can convey no more than a life interest, and therefore that the validity of her assignment to the next heir

*See ante, p. 78.
whether for the whole or part of the property will depend on the
question whether at her death, he is sole or joint heir. But this
view, is not consistent with the law relating to the widow's estate, as
laid down by Lord Gifford in Káshi-náth Basák versus Hara-nudárí
Dási and followed by this Court in Hari-dás Dutt versus Ranga-
mañi Dási.—

Upon the whole it appears to me that, although the question is not
free from doubt, the balance of the authorities is in favor of treating
such a transaction as that which took place between Ánanda-moyí Debi
and Káli-prasanna Mookerjea, as a disposition which the widow was,
with the implied consent of Káli-prasanna, her husband's nearest heir,
competent to enter into; at all events as one which neither the sons
of Káli-prasanna, nor the representatives of those sons, are entitled to
impeach. Such a conclusion, if justified by authority, is certainly one
which is agreeable to reason. And if that conclusion be sound, it fol-
low that on the case made by the bill, the plaintiff has neither any
interest in the share of Boidya-náth Mookerjea nor any title to relief
in this suit.

I entirely agree, however, with Mr. Justice Jackson in thinking
that in the circumstances of this case the bill, though dismissed,
should be dismissed without costs as against the principle defendants.
The other defendants must have their costs.—November 21st, 1856-
Boulnois' Reports Vol. I. pp. 120—136.

In this case, reported at page 120, the Chief Justice is reported
to have said—"Generally speaking, alienation of the property either by
gift, sale or mortgage is justified only by necessity, and requires the con-
sent of the husband's male relatives, or at least of his nearest relations."
We are authorized by his Lordship to state that for "and" should be
read "or," it not being his intention to express an opinion adverse to the
authorities which show that proved necessity will support alienation
for value by a Hindu widow.—Ibid. 382.

See also Doe on the demise of Madhu-súdan Dás versus Mahender-
lál Khán, and another.—Boulnois' Reports, Vol. II. p. 40.
I. The plaintiff comes in on a purchase from the three widows, and is opposed by the defendants, Rám-dhan and others, upon the ground of the sale from the widows to the plaintiff being illegal upon right of pre-emption, and upon an ikrór alleged to have been drawn up between Nimánanda, the father-in-law of the widows, and his brother Shóm-chánd, the father of the defendant Rám-dhan; he also pleads that he is not liable for wásitát, as he was not in possession, or for costs. We find from the record, that there are three grandsons of Nimánanda still living. They are the parties, whose interests are directly affected, if the sale by the widows is illegal, and they are the parties who ought to sue if that sale be contrary to law, but no suit has been preferred by them. The defendants might have in failure of certain heirs a right to the disputed property, but it is inchoate, and until that right shall have arisen, they are not the persons entitled to sue for infraction of the Hindu law to their detriment.

The next point regards the right of pre-emption urged by the defendants: they have never sued to exercise that right and shown that they are entitled to possession, after having done that which the law prescribes.

In regard to the ikrór of Nimánanda and Sám-chánd, the plaintiff was no party to that agreement, if any thing in contravention of it, has been done by the parties, or their heirs, the consequences of the infraction of the deed, do not rest with the plaintiff, and no issue in this case can be drawn, as between the parties to this cause on that point; should there be any ground of complaint between either of the contracting parties or their heirs, their remedy is open, and the grounds of action in such case should be the infraction of the conditions of the instrument.—20th July 1853. S. D. A. Decisions, pp. 641—645.
VYAVASTHA-DARPANA. 119

CASE No.—667 of 1858.

Gagan-chander Sen and others, (plaintiffs,) Appellants versus Joydurgá alias Golak-bási and others (defendants,) Respondents.

II. This case was admitted to special appeal on the 10th November 1858.

Petitioners are plaintiffs in this suit. They are the sons of Kirti-chander, who was the adopted son of Kálíká-prosád; while the principal defendant, Joy-durgá, is the widow of Obhoy-lochan, the adopted son of Jagat-chander, who was the son of Prán-kishore, a brother of Kálíká-prosád.

Petitioners raise this action against Joy-durgá, a childless widow, in order to declare that she is not competent to adopt a son to set aside certain alienation of her deceased husband’s property, which she has effected, and to acquire possession of the estate which came to her from her deceased husband, plaintiffs also appear to have added in the plaint that Joy-durgá was entitled to maintenance only.

Both the Lower Courts have thrown out the suit, on the ground that, as Kirti-chander, the plaintiffs’ father, is alive, the plaintiffs are not competent, during his life, to prefer this claim.

The counsel for the appellant has been unable to show us that, under any precedent of his Court, the more distant reversioners have, during the life-time of the immediate reversioners, a right to sue to set aside acts done by the widow; but they contend that this defect has been remedied, as the father of the appellants, who is the immediate reversioner, has filed a petition in this Court, waving his claim to the property, and a decision of his Court, dated 8th February, 1851, ‘Pratáckhander Dutí, Appellant, is quoted to show that such an application may be received even at this stage of the proceedings. We concur with the lower Courts in holding that the suit, in its present form, cannot lie.

We think that the immediate reversioners can alone bring an action to interfere with the acts of a widow in possession, and that the plaintiffs are reversioners in too remote a degree to entitle them to sue to set aside acts done by the widow, or to interfere with her management; and we consider that the defect of parties, which is apparent in the present suit, cannot now be remedied, and the decision quoted by the
counsel is directly opposed to the admission of a petition such as is now sought to be filed, we reject the appeal, with costs.—12th of May, 1859. S. D. A. Decisions, pp. 620, 621.

III. See also the case of *Nek-rám Lál* and *Brijo-kumár Lál* (defendants,) Appellants, versus *Súrja-bans Sáh* (plaintiff,) and others, Respondents, which is printed at page 891 of the S. D. A. Decisions for 1859, and dismissed as premature, the plaintiffs not being the immediate reversioners and being unable to show collusion on the part of more immediate heirs than themselves.

**Case No. 943 of 1857.**

*Gouri-kánta Dás and Musí. Rádhó Bibí (plaintiffs,) Appellants, versus Bhagabatí Dásí and others (defendants,)*

**Respondents.**

Petitioner, plaintiffs, alleged reversionary heirs, sued to reverse a sale effected by the widow of their uncle, and to get possession of the portion of the property unsold by her, that she might not waste it. Both the lower courts dismissed the claim, because the suit was not brought within 12 years from the date of sale, and because the widow being alive, the suit could not lie, as plaintiffs' rights could only accrue on her death, and she might survive them.

**Judgment:**

We are of opinion, under the circumstances stated in the certificate, that the plaintiffs are not out of time in bringing the present suit, and in fact that the statute of limitation, as between a reversioner and a Hindoo widow with a restricted interest in the property, or parties claiming by purchase from her, is altogether inapplicable, as the widow's possession is in no sense adverse to a reversioner, neither can the possession of a purchaser, from her be. It follows that at any period during the widow's life-time, it is in the power of the reversioner to call in question the exercise of the power of alienation by the widow, a power which she can only use under certain circumstances, and in the proper use of which a purchaser from her is in a great measure interested. When, however, the estate in reversion has become one in possession the statute of limitation begins to run; and after 12 years from that estate, the title of a purchaser from a Hindoo widow will, by the remedy becoming barred, stand good, as against the party in possession.
We think, moreover, that a suit like the present, to invalidate alienations already perfected, and for possession of the property with a view to the prevention of waste, or either inchoate or threatened will lie, though course evidence of such a nature must be procured as will convince the court that, but for its interference, ultimate loss to the heirs by succession will ensue.—31st May, 1858. S. D. A. Decisions, p. 1103.

CASE NO. 236 OF 1859.

Rámsankar Sarmá Choudhuri, (plaintiff,) Appellant, versus Ánandamoyí Débi and others, (defendants,) Respondents.

I. It appears that Srímatí held possession after the death of her husband, and then made the alleged gift to defendants' husbands, but as Srímatí had, after her husband's death, only a life interest in the property, and could not legally alienate to the preju-dice of the reversioners, and as, until her death, the right of those reversioners could not fully accrue, the plaintiff need not sue till after Srímatí's death, and as she died within 12 years of this suit being instituted, we are of opinion that the suit is not barred by the law of limitation.

We, therefore, decree the appeal with costs, and reversing the order of the judge, remand the case to be decided upon its merits.—20th April 1860 S. D. A. Decisions, pp. 508—510.

CASE NO. 777 OF 1857.

Chandér-kumárá Hájári, guardian of Srí-kánta Hájári minor (plaintiff,) pauper Appellant, versus Dwárká-náth Pradhán, and Jaga-dambó, wife of Bireshwar Pradhán, and others, (defendants,) Respondents.

CASE NO. 764 OF 1858.

Dwárká-náth Pradhán, (defendant,) Appellant, versus Chandér-kumárá Hájári, guardian of Srí-kánta Hájári, minor, (Plaintiff,) and others, (defendants,) Respondents.

II. Held in accordance with former precedents of this Court, that it is competent to the guardian of a minor, the first reversioner, after the death of the two intervening life-tenants, the widow and daughter of the former owner of the estate, notwithstanding that the minor's right is only contingent on his surviving them, and may, therefore, never vest.
to sue to remove obstructions out of the way of the first reversioner, and so to enable him, on the death of the successive tenants for life, if he survives them, immediately to enter on possession.

Held also, that in a suit of this nature no application of the statute of limitations can be made. The guardian need not have sued, but have left it to the minor to sue on his estate vesting; and, in this case, the minor would have been allowed twelve years, from the date of his estate vesting, for the prosecution of his claim.

Held that, on the evidence, plaintiff has been unable to show that the relationship between defendant's natural mother अनंदामोहिनी, and his adopting father बिरेन्द्रप्रसाद प्रधान, was first cousins once removed. But defendants have shown by the depositions of respectable persons that the relationship was more remote and one allowing of no objection on the score of nearness of the adoption, which, as to the act itself and the ceremonies necessary for its performance, was rightly performed.

Appeal of plaintiff decreed, with costs and the statute of limitations declared inapplicable to the present suit, and defendants' appeal on the merits decreed. Costs of both Courts payable by plaintiff.—24th December, 1859. S. D. A. Decisions, p. 1692.

No. 2036 or 1862.

Ananda-mohan Roy versus Chander-moni Dasi and others.

Case bearing on the Vyavastha Nos. 4169.

By the Court.—This was a suit by the reversionary heir of a childless Hindu widow to set aside certain alienations made by her. The Courts below decreed the plaintiff's claim, making the whole of the defendants jointly liable for mesne profits and costs. The defendant (especially) appealed to this Court, on the ground that the suit was barred by the statute of limitations. It was contended on his behalf that the title of the plaintiff accrued at the date of the gift by the widow, dated the 6th Assin, 1247, and that a former suit by plaintiff, based upon this deed, was nonsuited on the, 8th Augran, 1249. The present suit was brought on the 15th Jeyt, 1266 B. S. We are of opinion that the suit is not barred.—It is admitted that the widow died on the 22nd Maugh 1261, and that the plaintiff's title, as reversioner, was contingent upon her death. The plaintiff had two causes of action, one accruing on the gift, and the other on his own title as heir on the death of the widow.
The Judge has found, as a fact, that the gift was never acted upon, and that the possession remained in the widow up to the date of her death. The acceptance by the plaintiff of any title under the gift, which, even if admitted, could only convey the widow's life-interest, did not, in our opinion, act as a merger of the plaintiff's title as heir, and thus defeat his cause of action under the latter title.—15th June, 1868.

Judgment affirmed.


No.—104 or 1860.

Rajani-kanta Mitter and others, Appellants, versus Pran-chandra Bose and others, Respondents.

Case bearing on the Vyavasthaa. (No. 445.)

The appellant, Rajani-kanta Mitter, sued in the Zillah Court of Jessore to recover one-fourth share of a joint family property, being the share of his maternal grandfather, Ram-narsing Bose, who was one of the four sons of Gokul-chauder Bose, and the two defendants, Prem-chandra and Moti-kali, whose fathers respectively Ram-tuw and Ram-doydil were two other sons of the same Gokul. Plaintiff alleged that his grandmother Sarjama, Ram-narsing's widow, his mother Saradama, and himself, had lived in the family residence in common enjoyment of the family property, until he, plaintiff, attained his majority in 1862, when on claiming to be put into possession of his share, he was turned out of doors by his mother's cousins, and his rights denied.

The plea of limitation has not been insisted upon before us, and it is manifest that in a case of this nature, where the parties all lived together as members of an undivided Hindu family, the plaintiff's immediate predecessors being females, there could be no such adverse possession as to support a plea of limitation.

But another objection is taken to the suit, namely, that as plaintiff's maternal aunts Bindu-basini and Nritya-kali, childless widows, are still living, and the plaintiff's right to succeed is contingent on his surviving them, his suit is premature. These two ladies have filed, in the record of this case, a petition in which they acknowledge the plaintiff to be the rightful heir, disclaiming right of their own, and assent entirely to the suit. The Judge, gratuitously, as it seems to us, declares that he sets no value on this petition. He says: "We cannot be certain who filed the petition, and women in this country may be
induced to lend their names to any thing.” We can find no reason for this observation. The petition appears to have been filed in the usual way, through a pleader duly authorised. It is not suggested that those women had repudiated it, and we think it must have effect.

But we are asked what is its effect? Females, it has been argued, are not at liberty to do or assent to acts which may have the effect of changing the course of succession, and these two ladies' consent cannot operate to give the inheritance in this case to a person who may eventually not be the legal heir. We consider this objection untenable. A Hindu widow, it has been ruled, is competent to alienate with the consent of the next heir, an estate in which she possesses a life-interest, she has also been permitted to convey the estate to the next heir himself, it is admitted that by retiring from the world, as by becoming a Byrāghin, she might immediately cause the succession to devolve on the plaintiff, and we think that when the plaintiff raises a particular question of title with the defendants, which clearly his aunts would be fully entitled to raise, and he next after them, and when they expressly give up their right in his favor and assent to his suit, the defendants cannot be permitted to object that plaintiff cannot sue until after their death.

The Court then reviewed the evidence by which it had been sought in the Court below to establish a kebah, and being of opinion that it failed to do, gave

Judgment for the appellants.


Hari-dás Dutt versus Rangān-mañī Dásī and others.

Cases hearing on the Vyavasthā Nos. 24—27 44,47 & 61.

1. Hirā-lāl Mallik died intestate, leaving one widow Karunā-mañī, and four daughters, namely, Nabakumārī and the three defendants Rangān-mañi, Apurnā and Krishņa-mañi.

At the time of Hirā-lāl's death, Rangān-mañi was a childless widow, Joy-mañi subsequently married, and produced two sons, Hari-dás Dutt, the complainant, and the defendant Singh-charan, an infant of tender years, Apurnā also married, and had two daughters (one of whom died shortly after birth, and the other married and soon afterwards died, leaving a son still alive.) Krishņa-mañi had been married 24...
years, but had no child during that period. The fourth daughter Naba-kumari married after her father's death, but died long since in child-birth.

On Hiré tild's death his widow took possession of his estate and property as his representative, and held the same during her lifetime. Immediately after her death disputes commenced among the daughters, all of whom instituted equity suits against one another. When these suits were ripe for hearing, a decreetal order was passed by consent, substantially to the effect that Rangan-muni should wave all her claims, and, on dismissal of her bill, should receive Rs. 62,000, and live rent-free in the family dwelling house; that the worships of the idols should be enjoyed by Rangan-mani, Apuruda and Joy-mani by turns; that the residue of the estate should be divided between Apuruda, and Joy-muni, as the only daughters having issue, or capable of having issue at the time of their mother's death.

The said Hari-das Dutt, who is a reversionary heir to the estate, filed a bill, which alleged collusion between the defendants, and charged that their acts were in fraud of the reversioners' interests and a surprise on the court; that Rangan-muni as a childless widow was entitled to nothing; and that Joy-muni and Apuruda had but a life-estate. It was prayed that they might be restrained from carrying on their plans or committing further alienation or waste. A demurrer is filed to the above bill.

The essential part of the judgment passed by the Court (present Peel, C.J.) is as follows. The objection is mainly based on the nature of the estate of the Hindu female, when heiress, and on that of the next in succession. The latter is not a vested estate in remainder: it is a contingent interest. The heiress takes as the term implies by devolution of the property on her by act of law, and not by gift or act of a prior owner: she has no power to alienate the estate except for certain purposes: her disability is general, her ability execeptionable. Sir William Macnaghten has described it as a trust estate, probably not meaning to use the phrase in a strictly technical sense: he says, she is a "holder in trust for others, so much so that they who have the reversionary interest have clearly a right to restrain her if she commit waste." This accords with the opinion of certain of the Pandits stated by Lord Gifford in his judgment in the Privy Council here-
after referred to. If the heir in succession could not sue merely because he had not a vested estate in remainder, no one else could sue, and it would follow that a Hindu widow, who cannot commit waste, who is restrainable *quodam modo* if she do, might proceed to violate her duty to the estate, to exceed her powers, to pass the limits imposed on her by the law, to the injury of the next in succession, who must remain a passive and remediless spectator of the wrong done, while having the nearest interest though not a certain one of succession. This would be little consistent with the maxim of a legal remedy for every wrong. How idle would it be to talk of a restraint which the law would not enforce!

In the case of *Káshi-náth Basák and Ramá-náth Basák versus Hara-sundarí Dási* and *Kamal-mañí Dási*,* Clarke's Reports, p. 91,* Lord Gifford in his judgment mentions an opinion of certain *Pandits* that the female Hindu heir may be restrained from abusing her power of disposition. This opinion is supported by the authority of all the text-writers: it is most consistent with the general principles of the Hindu law as to females; and also perfectly consistent with reason; for surely there ought in reason to exist some where the power of preventing an alienation against her duty by one whose power of alienation is limited by the law, and who owes a duty to those in succession to preserve the corpus of the estate. Yet of what value would be a power of prevention, to which no court of justice would give effect? The Court therefore has no difficulty in coming to a decision that the suit is not demurrable on the general ground. It remains to be considered whether the bill states a sufficient case of waste, or misdealing analogous to waste. No doubt the remedy should not extend beyond the mischief.

A bill filed by the presumptive heir in succession against the immediate owner who has succeeded by inheritance, must show a case approaching to spoliation, must enable the Court to see that there is probable ground for apprehending that, unless an injunction be granted to restrain some threatened or impending act, ultimate loss to the heirs who may come into possession by succession will ensue. It is not enough to make out that some gift has been made or some disposition taken place, or that such is about to be made or to take place, which the law would not support. The estate of the female owner, her own personal estate, might be large, and adequate to repay ten

* See ante, p. 97 et seq.
times over the alleged spoliation, and there might not be the remotest prospect of loss; and the thing alienated might have no specific peculiar value.

The case made by this bill is one which does not appear to me to be at all a probable one: indeed there is one part of its statement apparently inconsistent with the case of collusion; a statement, namely of the existence of disputes prior to the filing of the bill. The account which the plaintiff asks, he is clearly not entitled to: they have nothing to do with the suits of the parties, or their mode of dealing with them, nor with the consent decrees: nor whether they are proper decrees; nor whether the Court was deceived or imposed upon by the parties to the suit, except as these matters may be evidence of the animus of the alienation. They have no tittle to complain of Rāgānasmṛiti's being an inmate of the family-house, nor of any grant to her of a right of residence therein for her life. That alienation is not wasteful and has no resemblance to it. If the right is ill conferred, it will not avail against those in succession. Neither have they any grounds of complaint in this suit of the arrangements as to the turn of worship: whether they are proper or improper in themselves, they do not furnish ground for a suit which can be maintained only upon the ground of waste or spoliation in the nature of it. It does not appear whether any of the parties, defendants, have any separate estate of their own: though their mother's property was Strī-dhān, yet Strī-dhān devolving by heirship is subject to restraints on alienation by the female heir, and cannot be viewed as the absolute property of the heir. It is alleged that the money will be lost, and fraud and deception are alleged; and where deceptive means are employed there is the more ground for alarm. On the whole then we think that the proper course is to overrule the demurrer; costs to be reserved until the hearing, when the Court will be better able to judge, whether these proposed dealings are wasteful, or a prudent step in the way of a compromise of a claim to litigate which might be ruinous to the estate.—S. C. 27th May 1851. Bell and Taylor's Reports, Vol. II. part 5. p. 279.

_Hari-dās Dutt, Appellant versus Sṛimatī Apūrnā Dāsī_and another, Respondents.

_On Appeal from the Supreme Court at Calcutta._

_The Right Hon. T. Pemberton Leith:_

---
II. Their Lordships do not think it necessary to trouble the Counsel for the Respondent. This Bill is filed by a party entitled to property secured during the life of the tenant for life; and the Bill proceeds on the ground that the property is endangered from the manner in which the tenant for life is dealing with it. The tenant for life is the daughter of the intestate Hirá-lál Mallik. It has been decided by this Court in the case of Káshi-náth Basák versus Hara-sundarí Dósí, after most full deliberate argument and consideration, that the principles which are applied in Courts of equity in England, for securing in the public funds any property to which one person is entitled in possession, and another is entitled in remainder, are not applicable to the case of property in India, where such property is in possession of a Hindu widow.

Now, the Bill alleges, that, in this respect, the widow and the daughter stand in the same situation. Whether they stand in the same situation or not, with respect to the right of disposition of the property, they at all events stand in the same situation as to the right of administration, and right of enjoyment for their lives; and the principle laid down in the case which has been referred to in this Court was this, that it is not sufficient to say that there is one person entitled in possession, and another entitled in remainder, in order to induce the Court to interfere to take the property out of the hands of the individual who is in possession of it; but it is necessary to show that there is danger to the property from the mode in which the party in possession is dealing with it, in which case, and in such case only, the Court will interfere.

The law, therefore, being perfectly settled by that decision, and that decision having been followed during the time Sir Edward Ryan presided over the Supreme Court, and also his successor, Sir Lawr-ance Peel, it must be considered as the settled law of the Courts in Bengal.

The question here is, has any thing been shown in this case to justify interference, or has the case, alleged in the Bill, been established by evidence?—The only evidence which exists being the answer of the defendant. It appears to their Lordships, it has not been made out at all. Can it be said, that the respondent, who according to the ordinary Hindu-custom, keeps in her house a certain portion of the money, having in the course of three months, invested Rs. 39,000, three
fourths, or at least two thirds, of the money in other securities, was guilty of a devastavit, or shewed the slightest intention of committing a devastavit in this respect. Their Lordships are of opinion that no such case is made out; and as the ground upon which the Bill was filed, therefore, entirely fails, the appeal must be dismissed with costs.

We must observe, that if there were any foundation for the law which has been now contended for at the Bar, the cases in which such applications would be made must have been, we should suppose, extremely frequent; yet no such instance has been produced, either from the Native or the Supreme Courts in which any order has been made for such interference, except in a case in which manifest danger, or risk of danger, has been proved to the satisfaction of the Court.

Their Lordships will advise her Majesty to affirm this decree with costs.—14th and 15th July, 1856. P. C. D. Moor's Indian Appeals, Vol. VI. pp. 448—447.

Doe on the demise of Madhu-rádan Dás versus Mahender-lói Khán and another.

Ejectment for land at Medunapore.

Jackson, J.—Read the following judgment, from which the facts of the case fully appear:—

Case bearing on the Vyavastha Nos. 41, 42, 43, 44, 24, 25, 26, 29, 30, 31.

The plaintiff is the purchaser, at a Sheriff's sale, of the right and title of Rajah Ojoodee-ram (properly, Rajá Ajodhy-ráma,) in the property in dispute, and the questions which we have now to decide relate to one-sixth of that property, to which Rajah Ojoodee-ram would have been entitled, had it not been for a deed of gift executed by the widow Sankara Dye, (properly, Shankará Deyí,) with his approval, in favour of the defendants. The findings of the Court at the trial were, that this deed was, in fact, executed by Sankara Dye, and that Rajah Ojoodee-ram and his five brothers (the parties entitled to succeed to the property on the decease of Sakara Dye, if they respectively survived her,) signed their names, with the word 'approved,' to this instrument. The Court also found that, at the time of the execution of the deed, Rajah Ojoodee-ram was in a state of indebtedness; that the widow Sankara Dye was aware of that fact; that the deed was an arrangement with the view of preserving the estate in the family, and that Ojoodee-ram signed the deed without consideration, and with the
object of defeating his creditors. The Court was therefore of opinion that Rajah Ojoodee-ram’s interest in the one-sixth did not pass to the defendants by the deed of gift, and gave the plaintiff a verdict for that portion of the property.

A rule nisi was obtained to enter a verdict for the defendants as to this one-sixth, on the ground that, although Rajah Ojoodee-ram joined in the deed as a consenting party, with the object of preventing his creditors obtaining his interest in the property, yet that such execution did not make the deed void as against creditors to the extent of one-sixth. We have now to dispose of this rule.

First, then, with respect to the defendants’ argument that they claim under the deed of Sankara Dye, and not under the consent of Rajah Ojoodee-ram. The nature and extent of the interest of a Hindoo widow in the property of her deceased husband, when he dies without male heirs, was long a vexed question.—Sir Francis Macnaghten considered her interest to be a life estate merely. Sir William Macnaghten deemed it a trust estate. But it seems now settled that she takes as heiress, by operation of law, a restrained estate of inheritance; her disability to alienate being general, and her ability to alienate exceptional. She is entitled to the possession and enjoyment of the property, but cannot alienate it without the consent of her husband’s heirs, unless such alienation be necessary for her own subsistence, or for religious and charitable purposes (such as the dowry of a daughter, building a temple, or digging a tank,) or in the nature of a gift of a portion in favour of her husband’s relatives. She fully represents the state as heiress in succession, and in cases affecting the property it is not necessary to make the next heirs of her husband co-plaintiffs or co-defendants with her. There are no such designations as tenants for life and remainder men, to be found in the Hindu treatises, and the widow, and after her decease, the next heirs of her husband living at her death, would seem to take estates in succession to each other.

The nature of the interest which the next heirs of the husband have in the estate, during the life-time of the widow, is also to be considered. It is not a vested interest, for the next heir of the husband who is to inherit cannot be ascertained till the death of the widow. The conclusion of Sir Lawrence Peel, in Hari-dás Dutt versus Rangnag-mani Dési that the interest of the next heir, during the life of the
widow, is a contingent interest,—would therefore seem to be correct, and is now the undoubted law of this Court. The interest is of that nature, however, that the Court will, on the application of the next heir living at the time, restrain the widow, from committing acts of waste.

Looking at the instrument then as the deed of Shankara Dye alone, irrespective of its approval by Ojoodee-ram which will hereafter be considered, we think that the defendants could take nothing under it after the death of the widow.

But in consequence of the approval of Ojoodee-ram written on this deed it has a more extended operation. The signature of Ojoodee-ram testifying his approval, may not be a conveyance or transfer in the popular sense of those words; but no writting is necessary for the transfer of property according to Hindu law, and a long course of decisions has established that an approval such as this operates to deprive Ojoodee-ram of his rights as heir, and to transfer and assure his contingent interest to the donee of the widow. The case has been argued as if the approval of Ojoodee-ram operated so as to give Sankara Dye a power to dispose of this property by her deed absolutely. Now it may be conceded that, if Ojoodee-ram had first conveyed his contingent interest to Sankara Dye, that then Sankara Dye might, by a subsequent instrument, have conveyed her restrained estate, and the contingent interest of Ojoodee-ram to the defendants; and that such an instrument would have operated, as her deed. But even in that case the widow would not have been able to convey the estate absolutely, or do more than convey her own estate, and what Ojoodee-ram had transferred to her. But the case we are now considering is of a very different character. In the present case, the arrangement is effected by one deed of gift to the defendants, and the conveyance of Sankara Dye, and the approval of Ojoodee-ram, are contemporanious acts, forming one transaction. There was no evidence showing an intention on the part of Ojoodee-ram to convey any power or interest to the widow, and the purport of the deed of gift does not support such a theory. But whether you consider the deed as a transfer by Ojoodee-ram to the defendants, or to the widow for the benefit of the defendants, (which seems to be unfounded in fact,) or as the joint conveyance of the widow and the party having the contingent interest, yet it is equally clear that
Ojoodee-ram, by the deed in question, deprived himself of all right as heir, and transferred from himself to the defendants that which the widow herself could not alone convey to them. We think the correct view of such a transaction is, that it is a joint conveyance by parties entitled to the restrained estate and the contingent interest, and this view is confirmed by a decision of the Sudder Court in 1849, and our decision in Jādu-maṇi Deb versus Sāradā-prasanna Mookerjea, although, in the latter case, I somewhat inaccurately spoke of the contingent interest as a reversion. (See ante, p. 109.)

Secondly,—it was contended that the interest of Ojoodee-ram was of such a nature, that it could not be taken in execution, and was not therefore, within the meaning of the 13th of Elizabeth, chap. 5.

The interest which Ojoodee-ram had in the property at the time of the execution of this deed was only a contingent interest, and such an interest could not be seized by the Sheriff under the old law. This case seems, the Advocate General contended, that although contingent interests were not seizable in execution when this deed of gift was executed, yet they are now seizable under the provisions of Act VI of 1855, and that we should hold that the contingent interest of Ojoodee-ram, being now liable to be taken in execution, the deed transferring it was void as against creditors. In the absence of any authority to the contrary, we think that the operation of this deed, as it affects creditors, must depend on the estate of the law which existed at the time of its execution, and that it is impossible to give the Act VI of 1855 a retrospective operation, so as to affect the deed of gift which was executed in 1852. In the absence of any retrospective enactment declaring the deed fraudulent, we do not see how we can hold that a deed, which was not fraudulent and void as against creditors at the time of its execution, can become so several years after, without any further act done by any of the parties to it.

We are, therefore, of opinion, that the defendants have established the second ground on which they moved, namely, that the property could not be taken in execution, and that the deed of gift was not therefore void as against creditors under the act of the 13th Elizabeth.

We would also advert to another point urged by Mr. Bell, that the debt of Ojoodee-ram, on account of which the property was seized and sold, was contracted after the date of the deed of gift. This raises
VYAVASTHA-DARPANA.

133

a question, often discussed, as to the extent to which future creditors are affected by such deeds. But it must be borne in mind that the finding of the Court is not that this is a mere voluntary deed, but that it is also a deed executed by Ojoodee-rum when he was in a state of great indebtedness, with the view of preserving the estates in the family, and defrauding creditors generally, and it is clear upon the authorities, that these findings would justify the Court in holding this deed fraudulent against subsequent creditors, if it were necessary to decide that point.

We think that the rule must be made absolute, and a verdict entered for the defendants as to the one-sixth of the property now in question. S. C.—27th May, 1859. Boulnois' Reports, Vol II., pp. 40—47.


Case bearing on the Vya.

vastha’s Nos. 54, 42. & 44.

Muset. Bhavan-mah (appellant) under a written engagement, alleged to have been executed by Su-
gandhá, widow of Kunwar-nárayan claimed the Zemindaree left by him. The Pandits in answer to the question proposed to them said “supposing Su-gandhá to have executed the engagement, without the assent of the heirs (by descent from her husband’s father Jadu-rám) then living, it will not avail against the right of these heirs to the Zemindaree, which descended from Jadu-rám to Kunwar-nárayan; nor will it establish any title in the appellant.” It appearing from the above exposition of the Hindoo law, that even allowing the engagement on which the appellant rested her claim to be authentic, it could not legally avail in favor of the appellant, the Court of Sudder Dewanny Adawlut (present J. H. Harington) affirmed the decrees passed against the appellant.—S. D. A. Rep. Vol. I, p. 322.

Case bearing on the Vya.

vastha No. 50.

It was formerly held by the Supreme Court that the widow took a movable property absolutely, and immovable property for life only; but it has since been thought, that there is not any ground for such a distinction, and that the widow takes but a life-estate in movable as well as immovable property.—Macn. Cons. H. L. P. 11.

In the year 1799, the Court seems to have thought, in the case of Deepál-chánd Ađádi versus Kishori Dáśi, that a woman (widow) is not to take more than an estate for life in the movable property of her
husband; and I am not able to discover why it first began to declare the widow and mother entitled an absolute property in the movable and a life-interest only in the immovable estate.—*Ibid.* p. 20.

In the above year the Court did not make any distinction between movable and immovable property in the hands of a Hindu woman. After that period, a distinction again originated; and widows claiming as heirs of their husbands, and mothers taking upon partition, were held to be entitled to movable estate absolutely, and to immovable estate for life only. Widows and mothers so taking respectively, have always been considered to stand upon the same footing in point of interest;—and in the case of Kāshi-nāth Basāk and Ramā-nāth Basāk against Haro-sundari Dāsi, (ante, p. 97) it was the opinion of the Court, upon a bill of review, that a widow taking by the death of her husband was not entitled to more than an estate for life in either movable or immovable property. This was in the year 1818. How the Court came to distinguish between movable and immovable property, with reference to the rights of widows or of mothers, I am not, as I have before intimated, at all informed. The Hindoo law is not sufficiently explicit upon the subject, to justify such a distinction; and it must be admitted, that giving these parties a life-interest only, in each species of estate, will be more just as it relates to others, and more beneficial as it relates to themselves.—*Idem.* p. 36.

I cannot but wish that the law, as it was certainly understood to exist, in the case of Kāsi-nāth Basāk and Ramā-nāth Basāk against Haro-Sundari Dāsi may be adhered to. The Judges were satisfied that a distinction between movable and immovable property in the hands of a widow was groundless.—*Idem.* pp. 23 & 32.


**Case**

The widow of a childless Hindoo sold the immovable estate of her husband, assigning in the deed as the only reason for selling it her incompetency to the management thereof. The sale was reversed, because such sale merely for the reason recorded by the widow is invalid under the Hindu law; and as it appeared that no tidings had been heard of the widow since the institution of the suit in the Zillah Court in 1806, at which time she
repaired to Benares, it was ordered that the contested lands be placed in deposit with the brothers of the widow's husband, until she be forthcoming; that in the event of her being forthcoming, provided she may not have committed any act involving expulsion from her tribe and exclusion from inheritance, the brothers (appellants) give her immediate possession.—27th January 1816. S. D. A. Rep. Vol. II. p. 167.

The vyavasthá delivered in the case was—"A woman cannot sell her husband's immovable estate to a stranger, except for the completion of the husband's funeral rites or her own maintenance, unless with the sanction of her husband's heirs, to whose control she is subject, and on whom on her demise the succession will devolve."


Case bearing on the Vyavasthás No. 41, 42, 44, 47.

The declaration in this suit is, that the táluk in question belonged to plaintiff's uncle, whose widow sold it to defendants, Mangal-maṇi and Níl-maṇi Deb's husband, which sales were illegal; and therefore plaintiff claims to annul them, and obtain possession. The pleas in defence are, that the plaintiff's father, in collusion with one Mohan-kánta Roy, deprived the widow of his brother of the estate in question, when defendant's husband assisted her to sue, and supported her; that she eventually gained a decree for the property; and then to repay them, sold 10 annas, and then 6 annas; and with the surplus of the purchase money, bought another property. The purchase money having therefore been expended in recovery of the estate, and for personal support and other legal objects, the sales are perfectly valid.

The principal Sudder Ameen decided, on vyavasthás called for in the case, that the sales were illegal, and must be annulled; and the widow had shown her readiness to injure the eventual heirs of the estate by selling it, there was no safety in putting her into possession. He therefore ordered that plaintiff, as next heir, be put into possession on condition of duly paying over to the widow during her life-time all the net profits from the estate: citing as a precedent a case confirmed in special appeal by the Sudder Court.

* 23rd November 1842 —Deb-maṇi Deb, petitioner.
In appeal, nothing new has been set forth or elicited; and as the sale was clearly illegal, and the decision of the Principal Sudder Ameen is just and equitable, it is affirmed, and appeal dismissed with full costs.—Sudder Dewanny Adawlut, 12th September, 1848.

CASE NO.—739 OF 1847.

Mr. R. Larmour, Manager of the Bengal Indigo Company, (Defendant,) Appellant versus Must. Tripuré.sundarl Dásí and others, (plaintiffs,) Respondents.

JUDGMENT:—

Case bearing on the Vyavasthá No. 41.

The points brought up in this appeal for our decision are: 1st,—The validity of the niyam-pattro; 2nd,—The necessity of Anna-párná to make the transfers she did, and, consequently, her legal power to make them, and whether the case should not be remanded to the Principal Sudder Ameen, because he has not given a clear opinion as to that necessity; 3rd.—The plaintiffs’ right of inheritance as heirs at law.

On the first point we have not the slightest hesitation in stating our entire disbelief of the alleged niyam-pattro.

On the second point, we have to observe, that the question of Anna-párná’s power to make this patná rests on the legal necessity, which, Hindoo law alone enlarges, the restrictions which bind a childless Hindoo widow, dealing with property in which, as such widow, she has only the life interest. No such necessity has been shown to us. That the witness to the patná lease depose that it was made to provide for the cost of the religious ceremonies of the family, and of those for the soul of the deceased Chintá-mánuśi; lastly, that the consent of the heirs and co-sharers, Harish and Ishwar, was given, they attesting the lease; and that all these circumstances rendered the patná valid.

In all above no such necessity has, in our opinion, been here shown as to justify Anna-párná, a childless Hindoo widow, making the patná referred to in this appeal, and appropriating the premium derived from assigning the property, in which she had but a limited life interest, as patná táluk.*

* This decision appears to be inaccurate; inasmuch as any settlement or transfer made by a Hindoo widow of her husband’s property with the consent of the then next heirs of her husband, should hold good even though there were no legal necessity for it.
On the third point, we find that plaintiffs, as brothers’ sons of Chiala-mashi, are, by Hindoo law, the heirs in preference to the defendant Mahesh.

Under these circumstances, we dismiss the appeal, with costs.—3rd of May 1859. S. D. A. Decisions, pp. 567—569.

**Case No. 147 of 1858.**

**Durgá-prosád Roy and others, (Respondents,) Petitioners versus Saradhaní Debó Choudhrami, (Appellant,) Opposite party.**

This is an application for a review of our Judgment in this case, so far as that judgment has reversed the decision of the Principal Sudder Ameen, adjudging to the plaintiffs, petitioners, possession of the property now in the hands of the widow. The learned counsel (the Advocate General) has argued that sufficient indication on the part of the widow to alienate the property of her husband from the reversionary heirs, is apparent from the attempt to set up a power of adoption, and that the court’s remarks as to the failure of that attempt being sufficient to deter her from future similar practices, are open to question as the present failure is no guarantee she will not have recourse to other schemes, and the proof of this attempt should induce the court to dispossess her at once.

We do not, however, see any necessity for modifying our opinion on this point, and we have some doubt as to whether the plaintiffs would be put in possession under any circumstances, as seeing that their rights as reversionary heirs on the decease of the widow cannot be certain, and it is on the supposition that they will be the actual heirs at that time that the case has any status before the Court, a matter which cannot be reckoned with certainty at the present time.—25th July 1858. S. D. A. D. p. 1281.

**Krishná Gobinda Sen versus Lóddí-mohan Thákur.**

**Case bearing on the Vyavastha No. 45, 46 & 47.**

Krishna-kanta Sen having no son, executed a deed, whereby he granted to his senior widow Ujjal-mashi the whole of his acquired property, in the event of no son being born; but in the event of a son being born, the property was to go to him. A son was born by her, but died before his father. The property in question was then declared to be vested in the son
immediately on his birth; and on his death, reverted to his father as his heir according to Shisstra. On the death of the father it devolved on Ujjal-mani who sold Taraf Rasulpur (part of the property.) Krishna-gobinda Sen, brother of the said Krishna-kanta Sen deceased sued for reversal of the sale. As the Court saw that the defendant’s plea—that Taraf Rasulpur was sold to defray the expenses of the Shraddha of Krishna-kanta Sen, and pay his debts, was not at all established; that the contrary was proved by the evidence; and that the cause of the sale assigned in the deed was the inability of the widow to pay the public revenue assessed thereon, they therefore reversed the sale, and declared the plaintiff, appellant, entitled to succeed to the property in right of inheritance from his brother.—30th August 1819. S. D. A. Rep. Vol. II. p. 309.

CASE No. 92.


CASE No. 93.

Bolaki Bibi, Appellant, versus Nanda-lal Babu and another, Respondents.

Case bearing on the Vyavasthas Nos. 41, 42, 44, 47, 50, 24, 25, 26.

The plaintiffs, alleging themselves to be next heirs, sued to set aside certain sales and settlements made by Bolaki Bibi, widow of the late Lata Doyal-chand Babu as prejudicial to their rights, as also to declare a will, made by the said Bibi, null and void, and to have the estates, movable and immovable, placed in their possession, a suitable allowance for maintenance being awarded to the Bibi.

Judgment.—Messrs. A. Dick and J. Dunbar, Judges:—The question which was first argued was—whether an action instituted by reversionary heirs against a widow in her life-time, to invalidate alienations by her of her husband’s ancestral property, and to dispossess her in consequence, and to obtain possession themselves, will lie? At the close of the argument, we intimated our opinion that such an action will lie: that opinion was founded on the following grounds. We observe that both the precedents, cited by the pleaders on both sides, and commented upon, that of 1816, decided by Mr. Ker,* and

See ante, page, 134.
that of 1845, by Mr. Dick, (ante, p. 135,) concur in this point. Mr. Ker declared invalid the alienation by the widow, and gave possession to the heirs until the widow should reappear. Mr. Dick confirmed the decision of the Lower Court, which declared the alienation invalid, and entrusted the management of the property to the heirs, reserving the usufruct to the widow. There can be no question that an action for waste will lie, because the Shástra expressly authorises the heirs to restrain the widow from waste, and we consider this an action of a similar nature, and the misconduct alleged likely to be far more injurious, as the purchasers must be aware that they hold their purchases only so long as the widow survives, and one of the acts complained of goes so far as to extinguish the rights of the legal heirs entirely. A Hindu widow succeeds to her husband’s property, on certain prohibitory and restrictive conditions. She is prohibited from alienating. Her life interest in it is not transferable. In brief, she can be considered in no other light than as a holder in trust for certain uses. See Macnaghten’s Principles of Hindu Law, page 19. If she be convicted of alienation, she is guilty of a breach of trust, and no further confidence can be placed in her. It is true, there is no specific remedy expressly provided in the Hindu law for such breach of trust. In cases in which the law has not provided a remedy for an evil, it is the peculiar duty of courts of equity to supply the omission, in accordance with the spirit of that law. Now the proper remedy for a breach of trust is the removal of trust from the party violating it.

The uses, however, on account of which the trust was given, should be preserved, if possible; and the reasons for which the widow was selected to administer the trust, should be respected. The natural course, then, for equity and justice to proceed upon, is to remove the widow from the management of the property, and to allow her such a maintenance from the proceeds of the property, as shall enable her to perform all the uses enjoined her, as widow, and as much as shall uphold her respectability and rank in life, secure her from want of every kind, and leave her no pretence to disgrace her husband’s family, or to pursue immoral courses. Such a procedure secures to the widow all that the law declares her right and gives her, and merely prevents her from repeating her disregard of the injunctions of that law. It, at the same time, secures to the reversionary heirs their right uninjured and unimpaired, without subjecting them to expensive and vexatious
litigations, to invalidate sales and obtain possession with perhaps years of mesne profits, which of itself is a sufficient answer to all arguments against hearing a suit in the life-time of the widow. It has been argued that the reversionary heirs are the last persons who should be selected to hold possession of the property, as they are the natural enemies of the widow; that their interests are directly opposed to hers, and that such a course would entail innumerable suits on the widow. They are, however, the parties most deeply interested in the due preservation of the property, and consequently most likely to preserve it. The courts are bound to care for their rights as well as for those of the widow, and as they will hold possession only so long as they pay out of the property the whole or such portion of the usufruct as the court may decree, and which may be required to be deposited at given times into court, the widow cannot be injured, or obliged to institute any suits.

It has been held that the Supreme Court represents those that by the Hindu law are to control and superintend widows in such cases. This Court, therefore, is the proper authority to interfere for the good of all concerned.—See Morley, Volume I. page 281.

Having disposed of the question of the admissibility of the action, we have now to decide upon the genuineness and authenticity of the anumati-pattāra put forward by Mussi. Boláki, as justifying the acts complained of by the plaintiffs. These acts being the sale of a garden in 1224 B. S., the grant of lands under hereditary mukarrari pāttās at inadequate jamās on two different occasions, in 1229 and 1251, and lastly the entire and absolute transfer of the proprietary right in the estate.

It is known that the family to which the parties belong came from the west, and were originally guided by the Mithilā law. Admitting the property may be disposed of under the law current in Bengal, when such a family have permanently fixed their residence there, it is but reasonable to believe that Doyāl-chānd would either have taken the precaution to have had a deed, involving a disposition of his property at variance with the Mithilā rules, registered at the time of execution, or that the widow and the mother should have had this strong evidence of authenticity assured to them, when they began to act upon the deed.
Upon the grounds above detailed, we have no hesitation in rejecting the annuiti-patta. Viewing the grant of the mukurari tenures, as acts not within the scope of a Hindu widow's authority, and regarding the late transfer of the whole of the estate by Musst. Balaki's will to others, as an act so prejudicial to the heirs, and indeed so utterly subversive of their rights, as to go far beyond any acts which could be brought under the definition of mere waste, for which the Skāstra distinctly declares that Hindoo widows to be held responsible and restrained, we think it our duty to deprive Musst. Balaki of the future management of the property. In doing this, however, we are careful that she shall lose none of those substantial advantages, to which during her life-time she is entitled.

In the appeal of Musst. Balaki (case No. 93,) we confirm the decision of the Principal Sudder Ameen, with the following modifications. We direct that the plaintiffs be placed in possession of all the landed and other property, with exception of the family-mansions, which will continue in the possession of the widow during life. They will pay the whole of the net profits, arising from the several properties, into the Zillah-court, quarterly, for the benefit of Musst. Balaki, during her life-time. In the event of their failing to fulfil this condition, for a period exceeding three months after any payment becomes due, the Zillah-court will report the circumstance, with a view to having the property placed in the hands of a sarbarah-kār or receiver. In the appeal of Madan Bobé, (case No. 92,) regarding the rent-free garden called Kūrah-bākh, we also confirm the decision of the Lower Court. The garden was sold in 1224 B. S., and there is prima facie evidence of its having been sold, to provide the means of paying a debt due by the deceased proprietor, under a decree of Court. Such a sale is valid under the Hindu law; and as the plaintiffs, by their long silence, have prevented the purchasers from producing satisfactory evidence to prove that the sale was made in order to satisfy the decree referred to, the latter are entitled to the benefit of the presumption, in their favor, of its validity, without being required to give actual proof.—Sudder Dewanny Adawlut, 24th July 1854.
Case No. 243 of 1858.
Golak-mani Debó, (one of the defendants,) Appellant versus Krishna-
prasád Kánúngo and others, (plaintiffs,) and others,
(defendants,) Respondents.

Case No. 244 of 1858.
Nityá-nanda Málátí (one of the defendants,) Appellant versus Krishna-
prasád Kánúngo and others (plaintiffs,) Respondents.

Case No. 245 of 1858.
Mistt. Anna-pární Debí (one of the defendants,) Appellant versus
Krishna-prasád Kánúngo and others (plaintiffs,) and others
(defendants,) Respondents.

JUDGMENT:—

Case bearing on the Vyava-
sthá Naun. 61, 64, 478 & 50.

Messrs. G. B. Trevor and G. Loch.—These three special appeals have been admitted to try first, whether a suit by reversionary heirs to set aside certain deeds of sale executed by a Hindu widow in possession, inasmuch as they were made for purposes not recognised by Hindu law, to obtain possession of the shares so alienated and also possession of the shares of the property still remaining unsold, on the ground that the widow, by her conduct, has shown that she is unfit to manage the same, can be brought in the life-time of the widow or not, and secondly, whether on ordering that possession be given to the reversionary heirs, with directions, that they account for the profits of the estate to the widow, security should not have been taken from the heirs for the due payment of the profits to her?

There is no question at the present time that suits by reversionary heirs, though their interest is not vested, but only contingent, to restrain waste or alienations in the nature of waste, by a Hindoo widow in possession, will lie. This point has been decided frequently both in the Supreme and this Court.*—The only question regarding which any contention can be raised is, whether, on waste or on alie-
nation being proved, it is legal or proper to divest the widow of possession placing the reversioners in possession as receivers, and making them liable to her for the rents and profits during her life-time.

We are unable to find any case on the point reported as having occurred in the Supreme Court, but it appears to us not improbable looking to the principles on which that Court, as a Court of equity, acts, that, on bill filed and proof given of illegal alienations, of the nature of waste, by the widow, the Court would appoint a receiver, and if it were for the benefit of the estate, would appoint the reversioner as such receiver.

Turning, however, to the decisions of this Court, we find the case of Nand-lal Bābu versus Bolāki Bībī* which has, since it was passed, been the leading case on the point before us. In that case alienations were proved to an extent entirely subversive of the rights of the heirs, and, the deed of authorisation under which they were alleged to have been made having been declared invalid, the widow was deprived of possession of the property, which was placed in the hands of the reversioners with directions that they should pay the whole net profits arising from the several properties into the Zillah Court quarterly. In the event of their failing to fulfil this condition for a period exceeding three months after any payment became due, the Zillah Court was directed to report the circumstance, with a view to having the property placed in the hands of a Sarbarāh-kār or receiver.

It is now objected, that this decision is not in conformity with Hindu law, under which, during her life-time, the widow cannot, under any circumstances, be deprived of possession of her husband's property. This objection mis-apprehends the ground upon which the decision objected to was passed. It was not passed in accordance with Hindu law, but in accordance with those principles on which a Court of equity should act. Those principles regard the remedy to be applied, and do not affect the rights of parties under Hindu law, which they leave intact.

We do not, and cannot, after the decision of the Privy Council in the case of Kāshī-nāth Basāk and Ramā-nāth Basāk versus Hara-sundari Dāsi and Kamal-maṇi Dāsi, decided by the Privy Council, (ante, 97.)

* See Decisions of S. D. A. for 1854, pp. 351, 373. Ante, p. 138,
regard the nature of a Hindu widow's interest in exactly the same light as it was regarded by the Judges who decided the suit in this Court in 1854; but, looking upon it not as a mere life estate, but as a restricted estate of inheritance, we, in accordance with that decision, think that, on sufficient proof by the reversioners being given that, but for the interference of the Courts ultimate loss of them as to the heirs who may succeed eventually will ensue from the conduct of the tenant in tail in possession of the property, and with a view of remedying or rather of preventing such loss, this Court should step in and appoint a receiver to take charge of the estate. The proof, though inferential, must be clear and cogent; and unless the evidence lead inevitably to the conclusion that the heirs will be damned if she be left in possession, the widow should not be divested of the possession of her husband's estate.

The conduct of the widow may not amount to what is technically called waste; but extending the meaning of that term to any illegal act of alienation, either directly or indirectly injuriously affecting the interest of the reversioners—alienations contrary to the nature of her estate, and therefore in the nature of waste,—we think that the same course should be pursued as should also be followed in a case of technical waste.

In placing the reversioners in possession, it is to be understood that, in a case like that before us, they are in possession not by any right appertaining to them, but simply as receivers, and on a consideration that, as heirs in reversion, they have the strongest interest in the well-being of the property entrusted to their care.

For the reasons then above given, we see no room to doubt that a suit of the nature of that out of which the present special appeals have arisen, viz. one by a reversioner for the setting aside of illegal alienation during the life-time of the widow, coupled with a prayer for possession as receiver, is maintainable in our Courts. And as the Judge finds, whether rightly or wrongly, that the alienations made are so subversive of the reversioner's rights as to justify the removal of the widow from possession, in order, it would seem, to prevent future acts of the same nature, we see no ground for interfering in special appeal with the decision passed by him.
As to the second objection raised in special appeal, it is not one to which we can listen in special appeal. The power of the Courts to appoint a receiver in such a case being clear, the details connected with such appointment must be left to the Courts themselves. As a general rule, on the appointment of a stranger as receiver, security should be required; but in a case in which the reversioner has been appointed the receiver, his interest in the retention of the management and in the welfare of the property may, in the Court's judgment, stand in the place of security, more specially as it is always in the power of the widow to move the Court either for the appointment of a fresh receiver, or for the demand of security, should the rents and profits be not regularly paid over to her as directed.—28th of February 1859. S. D. A. Decisions, pp. 210—214.

No. 440 of 1862.

Lal-sundar Das versus Hare-krishna Das.

This suit was instituted by reversioners against a Hindoo widow and her patni-dör, impugning the act of the widow in granting the patni as an act of waste prejudicial to their interest, and claiming immediate possession of the estate, and to set aside the patni as invalid.

Jackson, J.—This case has been referred to me in consequence of a difference of opinion between the Judges who heard it in the usual course. On special appeal Mr. Justice Steer would set aside so much of the Principal Sudder Ameen's judgment as affected the rights of the patni-dör, and Mr. Justice Morgan would set aside the judgment in toto, considering that the widow's act in granting the patni gave reversioners no such cause of action as would sustain this suit. The case has been re-argued before me, and it is contended for the special respondent, that the patni-dör has no such interest as would enable him to appeal against that part of the decree which regards the rights of the widow, and on this point the Court is referred to the case of Bhold-nath Moduk appellant.* But I am of opinion that under Section 337 of the Civil Procedure Code, the patni-dör, defendant, was entitled to appeal upon the whole case. The decision of the Lower Court proceeded upon a ground common to him and the widow, namely, the widow's inability to grant a patni. His possession was her possess-

---

sion, and would certainly be lost with her under the decree, and moreover he was ordered jointly with her to pay the plaintiff's costs. This appeal will, therefore, I think, go to the whole case.

The question is now whether the cause of action was one upon which the plaintiff was entitled to a decree. The Respondent's pleaders urged upon the Court the well-known precedent of Boláki Bibi, Appellant.* That decision, not the unanimous decision of the Court, has been generally looked upon as extremely harsh, and it has been since modified, especially by the observations of the Sudder Court in the case of Golak-maśi Dāśi, Appellant,† and I think looking at the light in which the status of a Hindu widow is now viewed, it would always be ruled at this day that to justify a suit for divesting the widow of possession, there must be clear evidence of acts on her part tending to injure the property, so that interference of the Courts is necessary to prevent ultimate injury to the eventual heirs. The criterion, therefore, in this case would be the plaintiffs' success or failure in showing that ultimate loss to them would result from the widow’s act. I do not see that any of the sort is established. The Principal Sudder Ameen calls the granting of this patnī an alienation, but I cannot see that it is so. It has the effect of diminishing the gross sum which the widow will receive by way of rental. It cannot be doubted that she might grant a lease for years, or one not going beyond her life-time. If on her death the next heirs, seeking to enter on the estate, should be met by the allegation of patnī, they will no doubt sue to get rid of the incumbrance and will presumably succeed. The attempts to oust a widow invariably arise from family quarrels, and there is ample evidence of such a quarrel in the present case. But I see no act of waste on the part of the widow, and nothing which gives any foundation for the present suit. I, therefore, concur with Mr. Justice Morgan in reversing the decree. It is accordingly reversed with costs of all the Courts against the special respondents.

I may add that if this were an honest suit, complaining of the patnī and praying that it might be set aside, or at least that it might be declared good for her life-time only, I should have been disposed to

---

grant such a declaration with costs in proportion. But the complexion of the suit is different; it calumnitates the widow in addition to seeking to divest her of possession.

Decree Reversed.


Hem-chând Majumdâi versus Târâ-maṇi and another.

Case, Sûrja-maṇi, widow of Bhoirâb-chander, executed a deed of relinquishment to Hem-chând, acknowledging and confirming an alleged transfer by her husband to Hem-chând, in payment of his debt. Claim being preferred by Târâ-maṇi, mother of the deceased proprietor (Bhoirâb-chander) on behalf of herself and Râi-maṇi, daughter of the deceased, to possession of the estate during the life-time of the widow, on the ground of the debt and transfer being false. The provincial court reversed the sâllah decree, and adjudged possession of the lands claimed to Musal. Târâ-maṇi. The Sudder Court admitted the appeal on consideration of the insufficiency of the proceedings of the Provincial court, and the erroneous adjudication of possession to Târâ-maṇi, who obviously was not the legal heir of Bhoirâb-chander, his wife and daughter surviving. Râi-maṇi was, on petition, admitted as joint Respondent with Târâ-maṇi.

In answer to a reference by the Court, the Hindu law officers gave a Vyavasthâ to the following effect:—"If a proprietor of a landed estate die leaving a grandmother, mother, step-mother, wife, unmarried daughter; and son of his father's uncle, his wife succeeds to the sole possession of the estate, but she cannot, without sufficient cause, or the consent of the above mentioned relations, transfer the property by gift or sale. The widow may transfer the real and personal estate of her deceased husband in discharge of his debts, if the amount of the debt exceed or equal the value of the estate; but if the value of the estate exceed the amount of the debt, the widow is only entitled to sell such part as may suffice to cover the debt. In order to render such sale by the widow valid, the debt must be proved by documentary evidence, or the testimony of witnesses, the declaration of the widow herself, or merely herself acknowledges the justice of the debt, not being ad-
missible. If in the present case, the widow have transferred her deceased husband’s estate in payment of his just debts, and the creditor under such sale obtained possession of the estate, the other heirs of the deceased are not entitled to set aside the sale by payment of the debt; but if, on judicial investigation, it be proved that the value of the estate exceed the amount of the debt, the court may pass such decision as they judge equitable. Debts incurred by any member of a family living jointly on account of any private concern, are exclusively demandable from that person and his heirs, and not from the other members of the family. Lastly, although the tā-dāvi in question was not in itself sufficient to convey to the appellant the proprietary right in the lands, yet if it were established by evidence (as stated in the documents in question,) that the husband of Sūrja-maṇi had verbally made over his share of the joint estate to Hem-chānd in payment of his debt, then Hem-chānd is entitled to the lands in question, and his right thereto would not be precluded, although it should appear that the value of the lands in question exceeded the amount of the debt, in payment of which they were so transferred”.

On consideration of the evidence taken, the Court (present Harington and Stuart, Judges) were of opinion that there was no sufficient proof either of Bhoirab-chander having incurred the debt (on which the deed of relinquishment (tā-dāvi) was grounded; or of his having in his life-time made over the lands to the appellant Hem-chānd. A final decree was therefore passed, amending the decree of the Provincial Court as far as it went to give possession to Tīrā-maṇi, and providing that after the death of Sūrja-maṇi the deed of relinquishment executed by her should not operate to preclude the right of the other surviving heir or heirs.—18th December, 1811, S. D. A. Rep. Vol. I. p. 359.

Case bearing on the vyāvastha No. 51.

I. In the case of Krishna-gobinda Sen and another versus Gangā-narāyaṇ Sircar, the Supreme Court declared a decided opinion that Ujjal-maṇi (who had inherited property from her late husband) had no right to make any grant of her interest in the estate, which could enure beyond her own life. The defendant finding that the grant (he had) from Ujjal-maṇi would not avail him, declined further contest, and verdict was given for the plaintiff.—Macn. Cons. H. L. P. 19.
Rāmānanda Mukhopādhyāy (Mookerjea) versus Rām-
krishṇa Dutt.

11. In this case it was admitted by all the (then) Judges of the Supreme
Court, that the grant which was made by the widow Pāraṇī Dāsī of the
property she inherited from her husband, (and which it clearly appeared
was not made for the benefit of her husband’s soul,) is good for her
life; and that if, after the death of Pāraṇī Dāsī, the heirs of her hus-
band Nāyān Shāh shall proceed against Rāmānanda Mukhopādhyāy
(the donee,) the case will be very different. I do not foresee that he can
have any defence as against them.—Macn. Cons. H. L. pp. 19, 20.

PRESENT:—

The Hon’ble Sir Barnes Peacock, Kt. Chief Justice, and the Hon’ble
A. T. Bailey, H. V. Bayley, F. B. Kemp, and L.
S. Jackson, Puisne Judges.

Cases No. 79, 84, 201 and 210 of 1862.
Nos. 78 and 84 of 1862.

No. 79.

Muss. GoŚiado-maṇi Dāsī, (Plaintiff,) Appellant, versus Shām-lāl
Basāk and others, (Defendants,) Respondents.

Regular Appeal, from decisions of the P. S. A. of Dacca.—

Case bearing on the Vyāvasthā Darpana, Nos. 46, 47 & 51.

The question, which was referred for the consider-
ation of a full Bench in these appeals, is whether
a conveyance by a Hindu widow of immovable pro-
PERTY which she takes by descent from her husband, is valid during
the widow’s life, if the conveyance is made for causes other than
those allowed by the Hindu law; and if not, whether the reversionary
heirs of the husband can interfere by suit to cause the property to be
delivered up to themselves or to the widow.

The case has been very fully and elaborately argued on both sides.
The principal authorities on the subject are collected in the Vyāvasthā-
Darpana, a very useful book upon Hindu law, by Baboo Shām-charan
Sircar.

Kāṭṭāyana says:—

“Let the childless widow, preserving unsullied the bed of her lord
and abiding with her venerable protector, enjoy the property, restrain-
ing herself until her death. After her, let the heirs take it.” (Cole-
brooks’s Dē. bhā, Chap. XI, Section I, para. 58.)
Again:—

"The widow is only to enjoy her husband’s estate. She is not competent to make a gift, mortgage, or sale of it." (Idem.)

In Colebrooke’s Digest, Vol. III., p. 465, it is said:—

"It fully appears that the widow’s disposal of her husband’s property at pleasure, otherwise than by the simple use of it or by donation for the benefit of the lord, is invalid."

Sir William Macnaghten, a very great authority, appears to have been of opinion that a gift or conveyance by a widow other than for allowable cause, was void, not only as against reversionary heirs of the husband, but also as against herself. (See Macnaghten’s Hindu law, Vol. I, pages 19&20.)

In the case of Doe-dem Banerjea versus Banerjea, the plaintiff was non-suited. The decision turned upon another point, and is no authority upon the question now under consideration, but it is important as containing the opinion which was delivered to East, C. J., by Macnaghten, J., drawn up by his son Sir William Macnaghten.

The opinion was as follows:—

"If a widow make a sale in perpetuity of her husband’s landed property, by a deed to that effect, the purchaser, as she had no right to make the sale, will not be benefited by it, nor will he be entitled, in virtue of it, to the interest which the widow has in the estate. This is founded upon the principle of the sale being without ownership, which renders it void, ab initio, and not, as I before thought, upon the principle of a greater interest being conveyed by the deed than the widow was competent to grant. The Pāndits whom I have to-day consulted agree in saying that, if one of four brothers make a deed of sale of the whole patrimonial property, it will hold good, as far as his share is concerned, because the sale creates ownership in the purchaser, and not the deed, which is only proof of the sale, and may be taken to prove it, as far as will serve that purpose, though invalid with respect to the conveyance of the property of the other brothers, it is valid against himself; and is proof of his intention. Not so in a deed made by a widow: she has no unlimited proprietary right over any part of her husband’s property, but merely a general usufructuary right over the whole indiscriminately. It is clear, therefore, that she cannot convey
the whole in perpetuity, but the deed by which she conveys it is void, *ab initio*, as to the sale; nor can it convey the interest which she possesses, which (independently of its not being transferable) is an interest of a totally different nature from that of proprietary right." (2nd Morley's Digest, p. 155.)

The opinion that the purchaser would not be entitled during the widow's life was founded upon the principle, that she had no proprietary right over any part of her husband's property, but merely a general *usufructuary* right over the whole indiscriminately, and that the sale being without ownership was void, *ab initio*, by the Hindu law. The opinion of Sir William Macnaghten was founded upon the same principle, upon which he also gave his opinion, in the same case, that sale of a father's property by a son during the father's life-time was void, *ab initio*, upon the ground that it was a sale without ownership and was therefore not binding, after the father's death, upon the son, who succeeded to the property as his father's heir. Sir William Macnaghten appears to have considered that the widow had no greater right in an estate which she takes by descent from her husband, than a son has in the estate of his father during his father's life-time.

This, however, is not the case. In *Golack-maṇi Debi* versus *Digamber Dey* (Sup., November 15th, 1852,) the Court said:—

"No part of the entire interest, when the widow takes by inheritance, is in suspense or abeyance in any way, nor is there a reversion on a life estate, but the whole interest is in the widow. When she takes as heir under the Hindu law, she is ranked in all treatises a heir. Sir Francis Macnaghten treats her estate rightly as anomalous, and other writers treat it as coming to her as heir; therefore, when they term it also a life estate, they mean that expression in a sense different from that of a pure and mere life estate." (Macpherson on Mortgages, 3rd Edition, page 25.)

The Court goes on to say:—

"It has been invariably considered for many years that the widow fully represents the estate; and it is also the settled law, that adverse possession which bars her, bars the heir also after her, which would not be the case if she were a mere tenant for life as known to the English law," (Ibid. p. 27.)
See also the case of Kāśī-ñāth Basāk and another versus Harasundarī Dāsī and another, in the Privy Council, 24th June, 1826, (Clerke’s Reports, p. 91, and Montriou’s cases in Hindu Law, p. 495) from which it would seem that the widow takes more than a life estate. See also Jádu-manī Debī versus Sárodā-prasanana Mookerjea (1. Boulnois’ Reports, p. 129; Macpherson on Mortgages, 3rd Edition, p. 28.)

In 6 Moore’s Indian Appeals, p. 433, Hari-dās Dutt versus Srimati Apūrva Dāsī, it was held that the title of a widow to her husband’s property, though a restricted one, was not in the nature of a trust.

There are some decisions in the Sudder Court in which it has been held that the conveyance does not operate as against the widow during her life-time. There are others in which the conveyance has been allowed to operate against her during her life-time.

In Hem-chander Mozumdár versus Tórá-manī (18th December, 1811, S. D. A. Report, Vol. I, page 359,) it was declared by the decree that a deed executed by the widow should not, after her death, operate to preclude the right of the surviving heirs, leaving it to operate during her life-time. (Ante, p. 147.)

In Krishṇa-gobinda Sen versus Gangā-nórāyaṇ Sircar, the Supreme Court declared a decided opinion that a widow had no right, other than for allowable causes, to make any grant of her interest in the estate which could endure beyond her own life. (Sir F. Mecnaghten’s Cons. Hindu law, page 19. See (Ante, p. 148.)

In the case of Rámánanda Mukhopádhyáy versus Rám-krishṇa Dutt (Idem, pages 19 and 20,) it was admitted by all the Judges of the Supreme Court that the grant which was made by a widow of property inherited from her husband, and which, it clearly appeared, was not made for the benefit of her husband’s soul, was good for her life. (Ante, p. 149.)

In Kāśī-ñāth Basāk and another versus Harasundarī Dāsī and another, in the Privy Council, to which we have already referred, Lord Gifford, after reviewing the opinions of the different Padjāts, observes:

"The result, as it appears to me, of these different opinions, is that they all agree, as I have already stated, that the widow Harasundarī Dāsī is entitled to absolute possession; that she has, for certain
purposes, a clear authority to dispose of her husband's property; she may do it for religious purposes, including dowry to a daughter, and making gifts and donations to the husband's family; but they differ in this: the Court Pāṇḍits say that if she alienates the property for other purposes, without the consent of the husband's relations, it would be invalid; the others say that, though she would incur moral blame, if applied for purposes not allowed, yet the act would be valid as against the relations of the husband; in that respect the four pāṇḍits differ from the pāṇḍits of the Court, founding their opinion upon the doctrines contained in the Rati-kara and Chintā-maṇi which were not overruled by the Dāya-bhāga and Dāya-tattva." (Vyavsthā Darpana page 138. First Edition.)

It appears also from the same judgment that two other pāṇḍits were examined, and were asked whether they agreed with, or differed from, the opinions of the Court pāṇḍits. Their answer was:—

"We agree upon all points with the opinions given by the Court pāṇḍits yesterday, with this exception: they yesterday stated that gifts of movable and immovable property made by a widow, for other than allowable causes, were not valid against herself or the next heir of her husband. We agree with them that such gifts are not valid as against the next heir of her husband; but we say that they are valid as against the widow who could not reclaim them, whereas the heir is entitled to do so." (Idem.)

In Fulton's Reports, page 73, Kāli-chānd Dutt versus Moore and others, Ryan C. J., says:—

"That a grant made by a widow for her own life is good, has been decided in this Court."

Upon the whole, after considering all the cases upon the subject, we are of opinion that a conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste which destroys the widow's estate and vests the property in the reversionary heirs, and that the conveyance is binding during the widow's life. The reversionary heirs are not, after her death, bound by the conveyance; but they are not entitled, during her life-time, to recover the
property either for their own or for the use of the widow, or to compel the restoration of it to her. If the widow in any case be imposed upon and induced to execute a conveyance by fraud, the conveyance will, in such case, as in all other cases of fraud, be void.

It has been urged that the reversionary heirs may be prejudiced if they cannot sue for the property during the widow’s life, for after her death it may be difficult to procure the necessary evidence to show that the conveyance was executed for causes not allowable; and that, in the case of movable property such as money or valuable securities irreparable injury may be done to the reversionary heirs by the grantees making away with the property during the widow’s life, or in the case of immovable property, by committing waste. But our decision will not preclude the reversionary heirs, even during the lifetime of the widow, from commencing a suit to declare that the conveyance was executed for causes not allowable, and is therefore not binding beyond the widow’s life. Nor will it deprive the reversionary heirs, during the life of the widow, of their remedy against the grantee to prevent waste or destruction of the property, whether movable or immovable in the event of their making out a sufficient case to justify the interference of the Court.

Our opinion will be reported to the Division Court by which the question was referred to us, for their information and guidance.—H. C. A. 7th of April, 1864. The Legal Remembrancer No. 1 Vol. I. pp. 4 to 6.

This, and the three decisions immediately preceding it, cannot, it is submitted, be reconciled in all respects with the fundamental principles laid down in the paramount authorities on the Hindu law as current in this country, I mean the Dáya-bhága of Jímśita-vákhaṇa the founder of the Bengal doctrine, the Dáya-tattva of Rághu-nandana according to whose doctrine our religious ceremonies are performed, the Dáya-krama-saṅgraha and commentary on the Dáya-bhága by Śrī-krisṇa. Those principles are:—"The widow is only to enjoy her husband's estate: she is not competent to make a gift, mortgage or sale of it. Let the childless widow, preserving unsullied the bed of her

* An elaborate and interesting criticism is written upon this decision by Mr. J. Cochran, a learned Barrister of long standing and great experience. Vide letter subscribed "Marcus" in the Supplement to the English-man of 11th July, 1864.
lord, and abiding with her venerable protector, enjoy with moderation, the property until her death. After her let the heirs take it.” (Dhá. bhá. p. 180, Dá. kra. sang. p. 3.) “With moderation,”] being abstemious.” (Srí-krishṇa’s commentary on the Dáya-bhága.) “For women the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husbands’ wealth.—This use even should not be by wearing delicate apparel, or indulging in other luxurics, but since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorised. In like manner (since benefit of the husband is to be consulted,) even a gift or other alienation is permitted for the completion of her husband’s funeral rites. Accordingly the author says: ‘Let not women make waste.’ Here ‘waste’ intends expenditure not useful to the owner of the property.—Hence, if she be unable to subsist otherwise, she is authorised to mortgage the property; or, if still unable, she may sell or otherwise alien it: for the same reason is equally applicable. Let her give to the paternal uncles and other relations of her husband presents in proportion to the wealth for the benefit of his departed soul. With their consent, however, she may bestow gifts on the kindred of her own father and mother.” (Vide Dá. bhá. p. 182; Dá. kra. sang. pp. 4,5. Ante, pp. 45—51.) The Dáya-tattva also lays down the same principles. From the above principles the conclusion drawn in the Viváda-bhangárghava, the translation whereof is called Col.:brooke’s Digest, is as follows:—“It fully appears that the widow’s disposal of her husband’s property at pleasure, otherwise than by the simple use of it, or by donation for the benefit of her lord, is invalid.”—Col.: Dig. Vol. III. p. 465.

* The following passages are considered to give a consistent interpretation of the fundamental principles of Hindu law as above quoted:—

“Her sex as well as her worldly inexperience expose the property to destruction without benefit to the deceased. To protect these different interests the law provides: 1st.—That the widow shall only have the use of the property; 2ndly, that her husband’s kindred shall be her guardians; and 3rdly, that the next of kin to the husband shall take his property after her death. The enjoyment of the property is given her upon two conditions: 1st, that she remains chaste; 2nd, that she does not make waste. The widow is thus in her right as wife entitled to enjoy the property of her deceased husband, and as heir bound to apply it for his spiritual benefit. Generally, she cannot make gifts, or sell or mortgage the property, because after her death the property is to go to the next heir of her husband; but when a sale or mortgage becomes necessary for any indispensable
As to the remedy provided for (in the last of the decisions in question,) namely, "Nor will it (meaning the decision in question) deprive the reversionary heirs, during the life of the widow, of their remedy against the grantee to prevent waste or destruction of the property, whether movable or immovable, in the event of their making out a sufficient case to justify the interference of the Court," it can not, it is submitted, in most cases prevent the waste or loss of the property to the reversioner; for, not to speak of the movable property, which can be made away with under many devices, specially by bankruptcy, but the decision in question has enabled the grantee to waste or destroy the immovable property irretrievably by default under the Revenue laws as now in force and several other means, and the property may be lost for ever to the reversioner before he could have recourse to the remedy provided for or be successful in making out a sufficient case to justify the Court's, interference, which in that case would be too late, and of no avail. Although it is not denied that the interest of him in remainder, is well worthy of the law's protection, yet the way in which the remedy is prescribed comes to this—that one has a right to a thing, which another is provided with means to deprive him of. A better remedy, therefore, should at least be provided for, so that such property may not be wasted by grantees under any device, but remain safe and secured for the reversioners.

Duty, religious or secular, or for her maintenance, it is valid, because duties must be performed, and she has a right to her maintenance from the property; and whenever gifts are made, or the property is sold or mortgaged, for the spiritual benefit of her husband, it is valid, because the heir takes the wealth for that purpose and not for his own benefit. As the spiritual benefit of the deceased and his ancestors is promoted not only by the funeral oblations made by her, but also by the rites performed by his relatives, in which he becomes a partaker, she is directed to make presents to the paternal uncles, and other relatives of the deceased in proportion to her wealth for the sake of his funeral rites. The payment of his debts is a moral as well as a legal duty; and the marriage of an unmarried daughter is a moral duty, which after his death, devolves upon his wife; whatever is done necessarily for these purposes is consequently valid. The validity of a gift, a mortgage or a sale, must therefore be determined by its peculiar circumstances. In the disposal of property by gifts or otherwise, the widow is subject to the control of her husband's family, and the only general rule laid down by law is: "Let not a wife make waste of her husband's property," and by "waste" is meant "expenses unproductive of benefit to the owner of the property." Gifts to her own family do not of course produce any such benefit, unless they should come within the general nature of alms, and are therefore invalid, if made without the consent of her husband's kindred."—Elb. In pp. 73—75, Sects. 164—166.
The decisions in question are also substantially irreconcilable with the Privy Council's decision cited below, which the Courts of British India are bound to follow. From the circumstance of no mention thereof being made in the last of the decisions above cited, it may be questioned if the Honorable Judges of the High Court who passed such decision, had at all seen, or at least consulted, that excellent decision of the highest tribunal, which is entirely consistent with the fundamental principles of Hindu law, as current not only in Madras, but also in the Schools of Law of the other presidencies.

The Collector of Masulipatam, Appellant, and Cavalry Vancata Narainapah, Respondent.

On Appeal from the Sudder Adawlut of Madras.—

Their Lordships' Judgment was pronounced by the Lord Justice Turner.

Case The Hindu widow, it was argued, has an estate of inheritance, not a life estate; the original estate, it is said, devolves on her in a course of succession derived from the husband, who had in him an estate of inheritance, which she takes as heir, yet what is this, in effect, but to apply the English law regulating the descent of lands in fee simple from ancestor to heir?

It is clear that under the Hindu law the widow, though she takes as heir, takes a special and qualified estate. Compared with any estate that passes under the English law by inheritance, it is an anomalous estate. It is a qualified proprietorship, and it is only by the principles of the Hindu law that the extent and nature of the qualification can be determined.

It is admitted, on all hands, that if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes, for religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power for disposition than that which she possesses for purely worldly purposes. To support an alienation for
the last she must show necessity. On the other hand, it may be taken as established, that an alienation by her which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. But it surely is not the necessary or legal consequence of this latter proposition that in the absence of collateral heirs of the husband, or on their failure, the fetter on the widow's power of alienation altogether drops. The exception in favor of alienation with consent may be due to a presumption of law that where that consent is given the purpose for which the alienation is made must be proper.

Nor does it appear to their Lordships that the construction of Hindu law which is now contended for, can be put upon the principle of "cessante ratione cessat ipsa lex." It is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power is imposed. Numberless authorities, from Manu downwards, may be cited to show that, according to the principles of Hindu law, the proper state of every woman is one of tutelage; that they always require protection and are never fit for independence. Sir Thomas Strange (See Strange on "Hindu law," Vol. I. p. 242) cites the authority of Manu for the proposition that, if a woman have no controller or protector, the King should control or protect her. Again, all the authorities concur in showing that, according to the principles of Hindu law, the life of a widow is to be one of ascetic privation (2d. Colebrooke's Dig., 459.) Hence, probably, it gave her a power of disposition for religious, which it denied to her for other, purposes. Those principles do not seem to be consistent with the doctrine that, on the failure of heirs, a widow becomes completely emancipated; perfectly uncontrolled in the disposal of her property; and free to squander her inherited wealth for the purposes of selfish enjoyment.

Their Lordships cannot but think that, if the consequences of the failure of heirs of the husband were such as they are now argued to be, there would be some decisions on a case so likely to have happened before; or, at all events, that there would be some trace of so startling an exception to the general rule of Hindu law touching females taking by succession the property of males, in the text writers and commentators.
Their Lordships are of opinion that the restrictions on a Hindu widow's power of alienation are inseparable from her estate, and that their existence does not depend on that of heirs capable of taking on her death. It follows that if, for want of heirs, the right to the property, so far as it has not been lawfully disposed of by her, passes to the crown. The crown must have the same power which an heir would have of protecting its interests by impeaching any unauthorized alienation by the widow.—29th and 30th of November 1861. Moore's Indian Appeals Vol. VIII. Part. 3. pp. 529—553.

As the right of the husband's heirs becomes vested after the widow's death, under authority of the text "after her, let the heirs take it;" * it follows then, that:—

**Vyavastha.**

52. Those of the nearest relations of the husband are alone entitled to inherit who survive the widow.†

And not the heirs of those who lived at the time of the husband's death, but died during the life of the widow.

**Rudra-chander Choudhuri, Appellant, versus Shambhu-chander Choudhuri, Respondent.**

1. *Lakshyi-narayan*, the proprietor of a four anna share of the property in dispute, died leaving three sons, *Sham-chander*, *Gobinda-chander* and *Rudra-chander*. *Gobind-chander*, the second brother, died in the Bengal year 1190, childless, but leaving his widow. His two brothers took possession of his share of the estate, alleging that he had made a gift of it to them, but his widow *Radha-mani* sued them, and ultimately obtained a decree in her favor in the Court of Sudder Dewanny Adawlut, and she got possession of the portion enjoyed by her husband during his life-time. *Sham-chander* the eldest brother, and father of the plaintiff *Shambhu-chander*, died in 1819, and *Radha-mani*, the widow of *Gobinda-chander*; died in 1821. The claim of the plaintiff was for half the property left by *Radha-mani*, to which she had succeeded on the death of her husband by a decree of the Court of Sudder Dewanny Adawlut. It was alleged on behalf of the plaintiff, that his father and

* See ante, p. 45.
† Vide Maze. H. L. Vol. I, pp. 26, 27:
the defendant had entered into an agreement, to the effect that, on the
death of Rádhá-маţi, they should equally divide between them the
property held by her, and that, in the event of either dying before
Rádhá-маţi, the representative of the deceased brother should share
equally with the survivor. It was urged, in reply, that no such agree-
ment as that alleged by the plaintiff had ever been executed, and that,
according to the Hindu law, the plaintiff had no legal claim to any
portion of the property left by Rádhá-маţi, his father having died
during her life-time. The third Judge of the Dacca Court of appeal
gave judgment in favor of the plaintiff.

Rudra-chander Choudhuri, being dissatisfied with his decision, appeal-
ed to the Court of Sudder Dewanny Adawlut, and the cause came to a
hearing on the 16th, 17th, 18th, and 19th of July 1821, before the officia-
ting Judge (W. Dorin,) who recorded his opinion to the following
effect: This claim appears to have been instituted for the recovery of
half the estate which was held by Gobinda-chander Choudhuri, and
which, on his death, devolved on his widow Rádhá-маţi. A decree
has been passed by the Court below in favor of the respondent,
partly on the ground of an alleged special agreement, and partly on
the general law of inheritance; but with reference to the question of
law, it appears necessary to investigate the matter more fully. From
the English version of the Dáya-bhága, of the Dáya-kroma-sangraha,
and of the Viváda-bhangórāva, compiled by Jagan-nótha Tarka-
panchánana, and translated by Mr. Colebrooke, as well as from the
Vyavasthás delivered by the Paúdits of the Court, in the case of
Rudra-chander Singh, petitioner, in the case of Srí-nárbyan Roy and
others versus Bhayó-jhó, and from the opinion delivered by the Paúdits
in this case, agreeably to the requisition of the Dacca Court of appeal,
it appears to be an established maxim of law, that, in the case of
landed property devolving on a woman by the death of her husband
the right of her husband’s heir begins to accrue from the date of the
death of the widow, not from the date of the death of her husband.
Consequently, of the husband’s heirs, they only can be entitled to the
inheritance who are living at the time of the widow’s death. The
right of him who dies during her life-time is entirely forfeited, and
cannot devolve on his son. This doctrine has been established by
former legal expositions. Although there is some difference between
the Hindu law as current in Purneah and the rest of Bengal, yet there
is no difference of opinion on this point, all agreeing that a widow succeeds in default of a son, grandson and great-grandson, and, although the widow is restricted from transferring the property, yet she is clearly an heir, and has an indefeasible right of succession. With regard to the opinion furnished by the Pandits of this Court at the requisition of the Dacca Court of Appeal, it is certain either that the question was not stated correctly, or that the purport of it was not clearly understood by law officers. It is fit, however, that the Pandits should have an opportunity of explaining their meaning, and that the same question should again be proposed to them. On the 8th of August the cause came on again before the Third and Officiating Judges (S. T. Goad and W. Dorin), the Pandits having delivered an amended reply to the following effect: "Under the circumstances now stated, the widow's husband's younger brother will succeed to the property which had devolved on her, and the son of his elder brother will not be entitled to any portion of it, because the property of a man which had devolved on his widow will, if at her death he had neither daughter nor daughter's son, nor parents, go to his brother, to the exclusion of his brother's son; the right of a brother's son being subordinate to that of a brother. The right of the husband's heirs does not accrue on his death, but on the death of his widow; because the following is the prescribed order of succession to the estate of a person leaving no male issue: First the widow succeeds, then the daughter, next the daughter's son, then the father, next the mother, then the brother, then the brother's son, and so forth. The rights of these individuals accrue consecutively, and therefore as long as one holding the prior right exists, the right of the heir whose claim is posterior cannot come into operation. This is the case in the present instance with the widow, the husband's brother, and his brother's son. Now, as it has been explained that the widow succeeded absolutely and by the ordinary law of inheritance to her husband's property, a suitable reply has been given conformably to the doctrine contained in the Dāya-bhāga, the Dāya-krama-sangraha, Vivāda-bhāngārṇava, and other authorities current in Bengal. Authorities:—Jānyavalkya, Vishnu, Vrihas (or Vridha) Manu, and Vrihaspati, cited in the Dāya-bhāga, &c." (ante, pp. 23, 24, & 26.)

After a perusal of the above exposition, and of the other documents connected with the case, the Third and Officiating Judges recorded
their opinion that the younger brother of the deceased *Gobinda-chan-
der*, who was alive at the time of the widow's death, was alone en-
titled to the property which had devolved on her. They were further
of opinion, that the authenticity of the alleged agreement had by
no means been proved, and consequently, that the claim of the re-
spondent, whether founded on that document or on the law of inhe-
ritance, must fall to the ground. The decree, therefore, of the Court
below was reversed, and judgment was given in favor of the appellant
awarding him possession of the property in dispute with mesne pro-


II. It appeared from the plaint, that an eight anna portion of
Monzhah Kurna-dhora, was the hereditary talook of *Hari-charan Chou-
dhuri*, the plaintiff's father-in-law, and on his death was enjoyed in
coparcenery by his four sons, *Rām-kownta Choudhuri* (the plaintiff's
husband,) *Devaki-nandan, Dharani-dhar* and *Kālī-prasād*, who all
lived together as a joint and undivided family. *Dharāṇi-dhar* died in
1181 B. S., leaving his widow *Sāradhanī* without issue. The three
surviving brothers, subsequently, while living together, purchased a
five anna share of Mouzah Pungason, &c., out of the profits derived
from their ancestorial estate. *Kālī-prasād* died childless in 1201 B.
S., leaving his widow *Musst. Shakhī Debi*, still living. The two re-
maining brothers, namely, the plaintiff's husband and *Devaki-nandan,
*after living together for a long time on friendly terms, quarrelled and
separated in the year 1215 B. S., and referred their dispute about
their respective shares of the landed property to the arbitration of
*Moulvi Nisār Ālī, Munhī Dewán Mān-gobinda, and Mīr Khairāt Ālī*, who divided the property equally between them, merely award-
ing, as maintenance to the widows of the deceased brothers, the pro-
fits during their lives of their respective shares (which, on their death,
were to revert equally to the surviving brothers,) payable by the sur-
viving ones; that of *Shakhī Debi* by *Devaki-nandan*, and that of *Su-
radhanī Debi* by *Rām-kownta*, the plaintiff's (appellant's) husband. The
plaintiff's husband died in Assin 1216 B. S., leaving two sons, minors,
by name *Rām-kūnār Choudhuri* and *Rāj-kūnār Choudhuri*; when
the defendants forcibly took possession of the lands in dispute, which
by the award of the arbitrators belonged to the plaintiff in her husband's right, and allowed her maintenance only. She therefore now sued for the recovery of her husband's share, which the defendants refused to restore.

The defendant Devaki-nandan Choudhuri, stated in answer, that his father Hari-charan Choudhuri sold four anna portion of the above ancestral estate to Guru-prasād Mujumdār, and that he (the defendant) had purchased it with his own money from the heirs of that person; that a three anna share of Mousah Pungason was bought at public auction by his younger brother Kali-prasād solely on his own account; that on his death, his widow had succeeded to the possession of it, and that therefore the plaintiff's suit for the recovery of it was inadmissible against him (the defendant;) that a two anna share of Mousah Pungason, &c., was purchased and engaged for by himself, exclusively, and that the plaintiff's statement, that it had been bought with the profits derived from the ancestral estate was altogether false, that, although the defendant and the plaintiff's husband consented to the arbitration of Moulni Nisar Ali and the others, yet, as he (the defendant) was absent through illness, and the depositions of his witnesses had not been taken in his presence, he was ignorant of the grounds of their award. The other defendant did not appear to plead.

The Zillah Judge passed a decree in favor of the plaintiff, awarding her possession of the share sued for, on the ground of the decision of arbitrators.

Devaki-nandan appealed to the Calcutta Provincial Court from the above decree, affirming that one-fourth of the lands belonged to Sura-dhani Debi, since deceased; whose heir he (the appellant) was. Dying shortly after the admission of the appeal, he was succeeded by his son Râm-joy Choudhuri.

The Senior and the Officiating Judges of the Court of Appeal passed a decree, amending the judgment of the Zillah Court, and awarding to Mussi. Joy-menji, as guardian to her minor sons, possession of her husband's shares, and to Râm-joy Choudhuri, as heir to Sura-dhani Debi (deceased widow of Dharaṇi-dhar,) of her husband's share, on the ground of opinion of the Paṣṭi, that "if Mussi, Sura-
chani (widow of Dharani-dhar) died during the life-time of Devaki-
nandan, her late husband's brother, he, and after his death, his
sons, would succeed to the fourth share which belonged to the said
Dharani-dhar.

The present appellant preferred a petition for a special appeal to the
Sudder Court. The case came to a hearing before the Third Judge
(J. Shakespeare,) who was of opinion that the decree of the Provin-
cial Court ought to be reversed, and the judgment of the Zillah Court
founded on the award of the arbitrators, affirmed. The case was
then referred to the Second Judge (C. Smith,) who did not concur in
the above opinion.

The case was next brought before the Chief Judge (W. Leicester)
and the Officiating Judge (J. H. Harrington.) They deemed it neces-
sary to consult the Pandits on the law of inheritance applicable to
the case, and the following was the substance of their opinion deli-
vered in reply to the questions of the Court: “If Miss. Sura-dhani,
widow of Dharani-dhar, died during the life-time of his brother Deva-
ki-nandan, and of the widow and sons of Rama-kanta Choudhuri, sm-
other of his brothers, Devaki-nandan is exclusively entitled to the share
of Dharani-dhar: inasmuch as a brother, according to the Hindu law,
succeeds before his nephew. If, in consequence of the award made
by arbitration, Rama-kanta Choudhuri obtained possession of his own and
of Dharani-dhar’s share, and gave maintenance to Miss. Sura-dhani
out of the profits of it, still he cannot legally succeed to the share
during the life-time of Sura-dhani inasmuch as a widow is entitled
to the property of her deceased husband: and if Miss. Sura-dhani
died subsequently to the death of Rama-kanta, Devaki-nandan is en-
titled to succeed to her husband’s property, being his proper heir, to
the exclusion of his nephews (Rama-kanta’s sons.) This is the Hindu
law as laid down by the authorities prevalent in Bengal. Authorities.—
The text of Jaiyavarnya, and Vishnu, cited in the Deya-bhaga.”
(See ante, pp. 28, 24.) The Pandits had previously stated, in reply to
a question propounded to them by Mr. Shakespeare, that on the death
of a widow, on whom property had devolved at the death of her hus-
bond, the widow of another brother was not under any circumstances
recognized as an heir by the Hindu law.
The Court seeing no reason to alter the decree of the Provincial Court, it was finally affirmed, and the appeal dismissed with costs.—

On the Daughter's Right of Succession.

As those persons, who are exhibited in the text "the wife, and the daughters," &c.—to be the next heirs on failure of the prior claimants, would have succeeded if the widow's right had never taken effect, so shall they equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time (when the widow dies, or when her right ceases) the succession of daughters and the rest is proper, since they confer greater benefits on the deceased (by oblations presented) than other claimants (Vide Dá. bhá. pp. 181, 182.) Therefore,—

Vyavastha. 53. In default of the wife, the daughter succeeds.*

Authority. I. The son of a man is even as himself, and the daughter is equal to the son: how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself.—Manu and Nárada. †

II. As a son, so does the daughter of a man proceed from his several limbs: how then should any other person take her father's property?—Vrihaspati. Vide Dá. bhá. p. 18.

III. On failure of male issue (vis. son, grandson, and great-grandson,) the daughter (inherits;) for she is equally a cause of perpetuating the race: both the son and daughter prolong the father's line of descendants. (a)—Nárada. Vide Dá. bhá. p. 184.

(a). The line of descendants here intends such descendants as present the oblation cake; for one, who is not an offerer of oblations, confers

Kib. Rat. Sect. 19, p. 75.

† Manu 8, 180. Not found in Nárada's institutes.
no benefits, and consequently differs in no respect from the offspring of
a stranger or no offspring at all. The daughter’s son is the giver of
oblations, not his son; nor the daughter’s daughter; for the oblation
ceases with him.—Dā. bhā. pp. 184, 185.

Vyavastha 54. Here again the unmarried daughter is in
the first place the sole heiress (i) of her father’s
property.*

(i). “The unmarried daughter is the sole heiress”—that is, to the ex-
clusion of the married daughter or daughters, if any.—Sri-krishṇa’s
commentary on the Dāya-bhāga.

Authority. I. Let a maiden daughter take the heritage of one
who dies leaving no son (grandson, and great-grand-
son;) if there be no such daughter, the married (u) daughter
shall inherit.—Parāsara.†

(u). By the term “married” is here meant the daughter who has a
son, or who is capable of bearing a son; and not the daughter who
is barren, or who is a son-less widow.

11. Of him, who leaves no appointed daughter, (nor son,) the
dharmajā (e) maiden daughter, of his own tribe, (o) shall, like a son,
take the inheritance.—Devala.‡

(e). Dharmajā—Daughter of the body and born of a legally married

(o) “Of his own tribe”—That is born of a wife of the same tribe
with himself.

If the maiden daughter, in whom the succession has vested, and
who has been afterwards married, die, the estate which was her, be-
comes the property of those persons, the married daughter or others, who
would regularly succeed if there were no such (unmarried daughter)

---

T. p. 64.
in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband and other heirs: for that (text, which is declaratory of the right of the husband and the rest) is relative exclusively to a woman's separate property (śrī-dhan.)—Dā. bhā. p. 183.

The maiden daughter, in whom the succession has vested, and who has been afterwards married, may die leaving, or without leaving, a son; in the second case, the succession of the sister who has, or is capable of having, a son, is indisputable. In the first case, however, it appears from the statement of Śrī-krishṇa Tarkālakāra, viz.—"If a maiden daughter in whom the succession was vested, and who was subsequently married, die without leaving a son, then her father's estate is inherited by her married sister, who has, or who is likely to have, a son," that it was his opinion that if the maiden daughter (vested with the succession, and afterwards married) die leaving a son, that son alone should succeed.* But Jīmāṭa-vāhana and the rest seem to be of opinion that, whether the maiden daughter vested with the succession, and afterwards married, die leaving or without leaving a son, in either case her sister who has, or is capable of having, a son, is entitled to succeed; for had it been the case that, on the death of the said daughter, her surviving son was alone entitled to inherit, these authors would certainly have laid it down as a particular rule. In truth, the opinion of Śrī-krishṇa is not consistent with justice and reason, as in that case, during the existence of the daughter who has, or is capable of having, a son, the daughter's son, whose title is inferior to that of the daughter, shall succeed before her without a positive text declaratory of his title; and the other daughter's son, who equally confer benefit on their grandfather by presenting the oblation of food and libation of water, shall, without a just cause, be excluded. The opinion of Jīmāṭa-vāhana, the founder of the Bengal doctrine, and the highest authority of this School, should therefore prevail in practice; for Jáṅyavalkya declares: "If two texts differ, reason must in practice prevail."—(Vide Coleb. Dig. Vol. III. p. 505.)

* Sir William Macnaghten, Mr. Elberling, and one or two others have followed the above opinion of Śrī-krishṇa Tarkālakāra perhaps without consulting Jīmāṭa-vāhana and the rest.
Sri-krishna Tarkāvaliśāra by laying down in his commentary on the Dāya-bhāga, that "if there be no widow, the daughter inherits; in the first place, a maiden daughter; or on failure of such, an affianced daughter: but if there be none, a married daughter:" has made a distinction in respect of succession between the daughter who is not, and the daughter who is, betrothed. Although this doctrine is not advanced by any other authority, yet it does not appear to be inconsistent with reason,—for, when under authority of a text of Goutama, such distinction is made in the succession to the Sri-dhan, then according to the maxim—"The sense of the law, ascertained in one instance, is applicable in others also, provided there be no impediment"—(Dā. bhā. p. 63. Note. 31,) it cannot be regarded as untenable.*

55. If there be no maiden daughter, then the daughter who has, and the daughter who is likely to have, a son, equally succeed.†

Authority. This is in conformity with the above text of Rājā-māra and the following text of Vṛihatattī: "Being of equal class (k) and married to a man of like tribe, and being virtuous and devoted to obedience, she (namely the daughter) whether krița or akrița (g), shall take the property of her father who leaves no son.

(k) "Of equal class"—that is, belonging to the same tribe with her father. "Married to a man of like tribe"—This is intended to exclude one married to a man of superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging the same class, confers benefits on her father by means of her son.—Dā. bhā. p. 186.

* Although Sir William Macneighten in his Hindu law, (Vol. I, p. 21) disapproves of the above distinction by saying, "this doctrine is not concurred in by any other authority," yet since, in the 2nd Volume of the same work (p. 40,) he has quoted, among the approved legal opinions, a vyavastha delivered by the Court Pandits in conformity with the above distinction, without making any remark as to the impropriety thereof, he must be considered to have afterwards acquiesced in it.

(g) 'Kriitá—That is, appointed to continue the male issue. 'Akriitá—Not so. The term Putriká-putra signifies either a son of the appointed daughter, as is said by Bashishtha: "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her, shall be my son;" or that term may signify a daughter becoming by special appointment a son; accordingly she is mentioned also by Bashishtha "a son second in rank: that is, the appointed daughter is considered to be a son second in rank."—Mitaksharé. According to Jimala-vahana—"The appointed daughter is as it were son (putra): and her son is deemed a son's son (poontra); and her father, to whom he (thus) appertains, becomes grandsire of son's son."—See Da. bhá. p. 153.

According to Hemádri, putriká-putra is of four descriptions. q. v.

(j) The expression "no son" (here) implies the failure of son, grandson, great-grandson, and wife; since the daughter's right accrues on failure of these.—Sri-krishna's commentary on the Dáya-bhága.

Vyavastha. 56. The daughter who is barren or who is a sonless widow (t), is not competent to inherit, notwithstanding the failure of the daughter who has, and the daughter who is capable of having, a son.*

Authority. "For they cannot confer benefit (on their deceased father) by presentation of the párvaha oblation through their sons.″* This opinion of Dikshita has been respected even by the author of Dáya-bhága.

(t) By the term "sonless widow" is here meant the widow who did not give birth a son, or she who had a son that afterwards died, consequently,—

Vyavastha. 57. Neither the daughter whose son is dead, but who has son's son, nor she who has a female issue, inherit, though they were not barren†.

58. The right once vested in a daughter does not cease until her death, notwithstanding she be barren, or a widow who has not borne a son but daughters only.

Reason. Because these cannot, like degradation, &c., destroy the heritable right.

59. The daughters, who are not entitled to inherit, are however entitled to maintenance from their father's estate, if they be destitute of the means of support, and the income of the estate be sufficient.

Authority. Because in the text of Vrihaspati—"With kavya and pura, let the widow honor the paternal uncles of her husband, his spiritual parents, and daughter's sons, the children of his sister, maternal uncles, and also old and unprotected persons, guests and females of the family"—the females of the family, that is, the widows of her husband's sons, and the rest have been declared objects of support.—See ante, pp. 49, 50.

60. If the daughters (competent to succeed) be numerous, a distribution should be made among them.—Coleb. Dig. Vol. III. p. 498.

61. And in default of any one of them, the other succeeds to the property-inherited by her. *

Reason. Because the daughter's son and the rest are not entitled to succeed so long as there exists a single daughter (competent to inherit); and because there is no positive text declaratory of the daughter's son's succession together with his mother's sister.

Precedent. In the case where two daughters succeeded to their father's estate, and one of them died leaving her sister then a childless widow, and a son, a question may arise whether the pro-


On the decease of one of them, whether they have male issue or not, the estate devolves on the surviving daughter; and it is not till after the death of all those daughters, that the estate goes to the next heirs of the father.—Elb. In. p. 76.
Vyavastha—Darpana. 171

Property inherited by the deceased woman would be taken by her son, or would devolve upon the sister though then disqualified to inherit. There are opinions both ways: some lawyers are of opinion that the surviving sister being a childless widow, and (therefore) incompetent to inherit, the property should devolve on the son of the deceased.* But others maintain that the surviving sister's being disqualified to inherit at the time of her sister's death is no bar to her taking her father's property left by the sister, because she does not inherit her sister's property so that her disqualifications at the time of her death should be taken into consideration; (and the fact of its being her father's, and not her sister's, property is manifest from her not having had absolute proprietary right over it, but only a restricted interest therein, as well as from its devolving on her father's heirs, and not on her own heirs;) and because, like wives,† the two daughters were, in the legal sense, held to be one and the same heir collectively succeeding to, and holding, their father's property, which on the death of one would of course remain in the hands of the other. This (latter) opinion is maintained by the High Court in its Original Jurisdiction. See Case No. 66 of 1865—Boidya-nath Seth plaintiff versus Durgad-charan Basak, decided on the 28th of February, 1865, by Hon'ble W. Morgan who consulted the Hon'ble Shambhu-nath Pandit on the point in question.

Vyavastha—62. Like the widow, the daughter also is incompetent, without a lawful cause or legal necessity,‡ to make a gift, sale or other alienation of the property she inherited, but shall enjoy it, restraining herself until her death: after her, it is to devolve on the heirs of her father.§

Authority with Reason.

Since it is shown by the text “let her enjoy with moderation the property of her lord: after her let the heirs take it”—that on the decease of the widow in whom the succession had vested, the legal heirs of the former owner

* This opinion is according to the general principle of the law. See Macn. H. L. Vol. II. pp. 44—46. post p. 174.
† Vide Macn. H. L. Vol. I. preliminary remarks, pp. XII, XIII.
‡ See ante pp. 47—59 & 93.
§ “But neither is her interest absolute.”—Macn. H. L. Vol. I. pp. 21—23. “As the daughter’s right to succeed is inferior to that of the widow, it necessarily follows that she too is only to enjoy the property, and that she is subject to the same restriction in the use of it as the widow. On her death, the estate goes to her father’s next heir.—Kib. 1n. pp. 76, 77.
those degraded, let food and clothes be provided."—Zillah Burdwan, July 25th, 1822, *Ibid.* Case 3, (pp. 42, 43.)

Q. A man of the *śādṛa* tribe had a son and a daughter. The son died during the lifetime of his father, leaving a widow. Afterwards the father died, leaving a daughter, who is mother of male issue, and his son’s widow. According to law, is the widow entitled to inherit the property, or the daughter of the deceased proprietor?

R. If the man died leaving no widow, his daughter (who is mother of male issue) is entitled to inherit his entire property, although there is a widow of his son; the widow having no right to her father-in-law’s property where his own daughter exists, because the daughter may cause her sons to present the funeral cake to her father, and also to two of his ancestors, but the widow of his son is not competent to fulfil this duty.

*Authorities.*—“The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, a pupil and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven, leaving no male issue. Even the son of a daughter delivers him in the next world, like the son of a son.” These doctrines are laid down in the *Dāya-bhāga* and other works.—City Dacca, March 27th, 1815. *Ibid.* Case 4, (pp. 43, 44.)

Q. If a person die, having two daughters, and subsequently one of them die, leaving two sons and her sister, her surviving; in this case, will the property of the deceased daughter devolve on her sons, or on her sister? What is the law in respect of such property, whether it be divided or undivided?

R. Supposing the person to have died leaving two daughters, and subsequently one of them to have died leaving two sons and a sister, her surviving; and the deceased daughter to have succeeded to the property at the time when she was a maiden, or to have succeeded after her marriage, and afterwards her sister to have become a barren or a childless widow, then the deceased daughter’s share of the paternal estate will devolve on her sons. If the deceased daughter
derived the right to the property after her marriage, and her sister
be not a barren or a childless widow; then that sister, she having
male issue, or being likely to have such, is entitled to the succession.
The property which devolves on the married daughter by right of
inheritance, goes at her death to her father's next heir. Of the
father's heirs, in default of an heir down to the widow, his daughter
is first in rank. The property, whether it be divided or undivided,
and whether after partition the family be re-united or not re-united,
will, according to the law as current in Bengal, devolve on the next
heir. This opinion is conformable to the Dáya-bhága, Commentary of
Sri-krishna Tárkáslkára on the Dáya-bhága, Dáya-krama-sangraha,
Vivádárañava-setu, Viváda-bhangárañava, and other authorities current
in Bengal.

Authorities.—"In default of the wife, the daughter next succeeds.
The following special rule must be here observed, namely, that if
a maiden daughter, in whom the succession has once vested, and
who has subsequently married, should die without having borne issue,
the married sister who has, and the sister who is likely to have, male
issue, inherit together the estate which had so vested in her. It does
not become the property of her husband or others, for their right is
exclusively to a woman's separate property (Stri-dhan.) But, if there
be no maiden daughter, then the daughter who has, and the daughter
who is likely to have, male issue, are together entitled to the succe-
sion; and on failure of either of them, the other takes the heritage. In
default of daughters having, and daughters likely to have, male issue,
daughters who are barren, or widows destitute of male issue, are
incompetent to take the inheritance, because they cannot benefit
the deceased owner, by offering (through the medium of sons) the
funeral oblation at solemn obsequies. In default of all daughters (who
are entitled to succeed,) the daughter's son takes the inheritance.''
This is laid down in the Dáya-krama-sangraha, Vivádárañava-setu, and
other authorities.

In like manner, if the succession have devolved on a daughter, those
persons who would have been heirs of her father's property, in her
default, (as her son, her paternal grandfather, &c,) take the succession
on her death; not the heir to the daughter's property (as her daughter's
son, &c. This is cited in the Dáya-bhága.—Sudder Dewanny Adawiut.
Ibid. Ch. I. Sect. 3, Case 5, (pp. 44—46.)
The proprietor of an ancestral landed estate died, leaving a widow and a daughter him surviving. Subsequently to his death, his widow took possession of the property by right of inheritance, and then she died, leaving the daughter before mentioned, who was a childless widow, and a son of her husband's paternal uncle. Now these two survivors claimed the inheritance; in this case, which of them is entitled to it, or are they both, and if so, in what proportions?

Property which had devolved on a widow at her husband's death, goes, when she dies, to the son of her husband's paternal uncle, to the exclusion of her childless widowed daughter.

R. Under the circumstances above stated, according to law, the succession devolves on the son of the paternal uncle, by whom the childless widowed daughter is excluded; but she is entitled to receive ood and raiment from the son of the paternal uncle of the proprietor. This opinion is conformable to the Dāya-bhāga and other works of law.—Dacca Court of appeal, February 6th, 1808—Ibid. Case 6, (p. 46.)

Q. I. A man died leaving a widow (A,) and a daughter (B,) who had two sons (C and D,) of whom the former died before his mother, leaving a widow, but no issue. In this case, has the widow of C, either during the life-time of B, or on her death, any right to the property left by the original proprietor? Or on the death of B, will the property devolve on D, or on his heirs, while C's widow is living?

The Claimants being a daughter or daughter's son, and the widow of a daughter's son, the latter will be excluded, and two first will inherit, in succession.

R. I. At the death of the original proprietor, who left no heir down to a great grandson, his widow was entitled to his property; and at her death, her daughter, B, had the right of inheritance, her son's (C's) widow having no right of succession; as her husband's property over his maternal grandfather's property could not have accrued during the life-time of his mother; but on the death of B, her son, D, is entitled to inherit the whole property of his maternal grandfather; and on his death, his heirs will take it, to the exclusion of C's widow. This opinion is conformable to the Dāya-bhāga, Vivāda-bhangārṇava, and other authorities.

Authorities.—The text of Jānyavalkya and Vishnu. (See ante, pp. 23, 24.)

Q. 2. On the death of the original proprietor, his widow made a gift of his entire property to her two grandsons C and D, while their mother,
that is the daughter (B) was living. In this case is the gift binding and good?

R. 2. Supposing the widow, during the life-time of her daughter B, to have made a gift of the whole property of her husband which devolved on her at his death by law of inheritance, without the express consent of her daughter, to her grandsons, the gift is illegal, as it is a settled rule, that the widow has only the right to enjoy her husband’s property with moderation until her death. This is consonant to the doctrines cited in the Dāya-bhāga and other law tracts.

Authorities.—the text of Kātyāyana and that of Dāna-dharma, a chapter of the Mahābhārata. (See ante, pp. 45 & 48.)

Zillah Nuddha, March 8th, 1823. Ibid. Case 8, (pp. 47—49.) Khyaman-kari Dāsi versus Ánanda-chander Gupta.

Q. Is a daughter’s son entitled to inherit the estate of his maternal grandfather, while a childless widowed daughter of that ancestor exists?

A daughter’s son excludes a daughter, being a childless widow and no heir.

R. The daughter’s son is alone entitled to succeed his maternal grandfather, even though his daughter who is a childless widow is living, she being excluded by reason of her having neither husband nor issue.

Authorities:—

The text of Vṛihapati cited in the Dāya-bhāga and other legal authorities. “As the ownership of her father’s wealth devolves on her, although kindred exists; so her son likewise is acknowledged to be heir to his maternal grandfather’s estate.”

MANU.—“The maternal grandfather becomes in law the father of a son; let that son give the funeral cake, and possess the inheritance.”

The true meaning of the preceding passage is, “that in default of daughters likely to have male issue, daughters who are barren, or widows destitute of male issue, are incompetent to take the inheritance, because they cannot benefit the deceased owner by offering (through the medium of sons) the funeral oblation at solemn obsequies.—Zillah Hoogly, July 1st, 1822. Ibid. Case 9, (pp. 49, 50.)
Raj-chander Das versus Musal. Dhan-mani.

Cases bearing on the vyavastha No. 56.

I. A widow died after suing for her husband’s property. The Sudder Court pronounced a decree in favor of her daughter. The vyavastha upon which this decree was founded, was:—“The daughter was the legal heir, if she have a son or if there be any probability of her having one. Should she die without producing a son, her husband had no claim to the property which should (then) devolve on her father’s heirs.—24th May, 1824. S. D. A. Rep. Vol. III. pp. 361—363.

See also the following cases:—


Haridas Dutta, versus Ragaratnamani Das and others. Ante, pp. 124—129.

Roy Shom-ballabh versus Pran-kishna Ghose.

Case bearing on the vyavastha No. 58, 60, 61.

Two maiden daughters of Jagat-ballabh succeeded into equal shares to his estate. Of these, one dying childless widow, the other (as heir to the father of the deceased) took the vacant succession in preference to her father’s brother’s son.—29th March 1830, S. D. A. Rep. Vol. V, page 21.

Musal. Abhay and another versus Ishwar-chander Gunguri.

Case bearing on the vyavastha No. 52&53.

A Hindu widow executed a testamentary deed of gift of the landed property which she inherited from her husband, in favor of her four daughters, granting them equal shares of the property to be entered on by them after her death. The daughter of one of the two daughters, who died during the lifetime of the widow, sued the two surviving daughters, for a fourth share of the property in right of her deceased mother.
On consideration of all the documents, the Sudder Court (present, J. Pendall, and S. T. Good) were of opinion that the deed of gift under which the plaintiff claimed a share of the property, was invalid, and that, as the title of her mother Apârvâ to the said property had never been completed, from her having died before her mother Lakhy-prîyâ (the said widow,) the plaintiff who claimed the property through her mother had consequently no right thereto, and accordingly dismissed the claim.—2nd April 1819, S. D. A. Bep. Vol. II. p. 290.

CASE NO. 137 OF 1862.

Musiamôt Lakhyi-maâni Dâsi, (one of the Defendants,) Appel-lant, versus Târâ-maâni Guptâ, (Plaintiff,) and others, (Defendants) Respondents.

Plaintiff, Târâ-maâni Guptâ, and others, sued Lakhyi-maâni Dâsi for possession of a share in a talook by right of inheritance. The simple point of Hindu law in dispute in the Courts below was, whether the defendant, a childless widowed daughter, succeeds, in preference to the uncle's son, or first cousin, under Hindu law. The point was ruled adversely to the defendant, the daughter in the Court below; and she has now come up, urging the same point in special appeal. As, however, it is clear that, under Hindu law, the daughter inherits, not on account of relationship, but for the benefit she confers on the deceased by continuing the line of succession, it follows that the childless widowed daughter, who has no possibility of continuing the line of succession, can never inherit.

We reject the appeal, with costs.—The 29th July, 1862. H. C. A. part I. p. 67.

DAUGHTER'S SON'S RIGHT OF SUCCESSION.

Vyavastha. 63. On failure of the qualified daughter (d), the succession devolves on the daughter's son.*

(d) By the expression "on failure of the qualified daughter" is here meant the failure of the maiden daughter, the daughter who has, and the daughter who is likely to have, a son; since the daughter's son inherits notwithstanding the existence of the daughter who is barren or who is a sonless widow.

Authority. I. By that male child, whom a daughter, whether kritó or akritó, shall produce from a husband of equal class, the maternal grandfather becomes grandsire of a son's son; let that son offer the oblation-cake and possess the inheritance.† Manu. Ch. IX. v. 136.

II. Let the daughter's son take the whole estate of the father (n) who leaves no son (p); and let him offer funeral oblations;—one to his own father, the other to his maternal grandfather.†—Manu. Ch. IX. v. 132.

(n) "Of the father"—that is, of the father of the mother. (See Dá. krá. sang. p. 10.)

(p) The term "leaving no son" is here used to signify failure of heirs as far as the daughter, otherwise it contradicts the text of Jágnyavalkya: ("The wife, and the daughters," &c. Ante, p. 23,) and also the texts of other sages. (See Dá. krá. sang. p. 10.)

III. Between a son's son and the son of a daughter there is no difference in law; since their father and mother both sprung from the body of the same man.†—Manu. Ch. IX, v. 133.

IV. If one die leaving neither son nor grandson, the daughter's son shall inherit the estate; (for, by consent of all,) the son's son and the daughter's son are alike in respect of the celebration of obsequies.†—Vishnú.

V. The maiden daughter, married daughter, and daughter's son, are all signified by the plural term "daughters" in Jágnyavalkya's text:—"The wife and the daughters," &c. (Ante, p. 23.) As the word "son," in the phrase "who departed for heaven leaving no son,"

---


† Dá. bhá. p. 191.—Dá. T. p. 54.—Coleb. Dig. Vol. III, p. 498. This text is not found in the instances of Vishnú. It is cited by Raghunandana in his Udyutattva as on the authority of Govinda-rāja's quotation.
intends male issue down to the great-grandson, since he is equally a giver of oblations; so does the term "daughters" comprehend the daughter's son, for he also is the giver of oblation-cakes.*

REMARK. The followers of the Mithilā school assert, that the daughter's son is entitled to the heritage after the whole of the heirs enumerated in the text—"The wife, and the daughter," &c. and several other texts. (See ante, pp. 23 & seq.) This is wrong; for since a series of heirs is recounted ending with the king, whose failure never occurs, it must necessarily result that the daughter's son could not obtain the inheritance at all, and the texts declaratory of his right would then be irrelevant.†

CONCLUSION. Therefore the succession of the daughter's son, on failure of daughters, as affirmed by Vishva-rāja, Jitendriya, Bhaja-deva, and Govinda-rāja, should be respected.‡

Vyavastha' 64. If the daughter's sons be numerous, a distribution must be made: the shares shall be equal and inherited per capita, and not per stirpes.§

EXAMPLE. For instance,—If there be two sons of one daughter, and three of another, five equal shares must be allotted; they shall not first divide the estate into two parts, and afterwards allot one share to each; for such a mode of distribution is only ordained in partition among the sons of sons; and the reasoning is not equal, for, a son's son, whose own father is dead, receives a share from his uncle; but the daughter's son, whose mother is deceased, does not receive a share from his mother's sister.—Coleb. Dig. Vol. III. p. 501.

Vyavastha. 65. On the death of a daughter's son, who has received the heritage of his maternal grandfather, his own son or other heir takes the estate inherited by him, because it had become the property of his ancestor; and not the heirs of the maternal grandfather.—Coleb. Dig. Vol. III. p. 502.

Vyavashta: 66. The daughter's adopted son is not entitled to inherit her father's estate. (See the chapter on adoption.)

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. Three individuals (being uterine brothers) live together, enjoying their patrimonial property as an undivided family. The elder brother dies, leaving a wife and daughter him surviving. The second brother dies, leaving a son. The younger brother dies also, leaving a wife and son. On the death of the elder brother, his widow continued to live with her husband's second and younger brothers, exclusively enjoying her portion of the property. She subsequently died, leaving her daughter, and that daughter's son. Afterwards the daughter died, leaving her son. In this case, does the estate of the elder brother devolve on his daughter's son, or on his nephews—in other words, the sons of his second and younger brothers?

R. Under these circumstances, the estate of the eldest brother will be inherited by his daughter's son, and not by his second and younger brothers' sons. This opinion is conformable to law.—Zillah Tipperah. June 27th, 1815. Macn. H. L. Vol. II. Ch. I. Sect. 3, Case 10, (p. 50.)

Q. A man dying, and leaving a brother's widow and son, and a daughter's son, (the whole family being joint and undivided,) have the two former any right to participate in the property of the deceased, notwithstanding the existence of the latter, he being in a state of minority?

R. On failure of heirs down to the daughters, the grandson of the deceased in the female line is alone entitled to the succession, to the entire exclusion of the brother's widow and son, even though they lived with the minor as a joint and united family. The estate to which the minor is entitled by inheritance will be managed by his nearest of kin during his minority.
Authorities.—"The wife and the daughters, also both parents, brothers likewise," &c. The term "daughters" implies both the daughters and their sons. (See ante, pp. 180, 181.)

Dacca Court of Appeal, August 20th, 1819. Ibid. Case II. (p. 51.)

Q. A person had two sons by different wives. His younger son died, leaving a widow, both parents, and his half brother (who was elder than himself;) him surviving; subsequently to his death, the father died, and the eldest son took possession of all the movable and immovable property which he left. Sometime afterwards, this son died, leaving his step-mother, a daughter's son, and the widow of his half brother. The widow of his brother who died last became possessed of all the property which had devolved on her husband, and soon after died, leaving two claimants to the estate; namely, her own grandson in the female line, and the widow of the first deceased (being the younger son) still living. In this case, according to law, does the estate devolve on the daughter's son of the eldest son, or on the widow of the younger one?

R. In default of heirs down to daughters having, and daughters likely to have, male issue, the daughter's son is entitled to the succession. The widow whose husband died during the life-time of his father, has no right to take the inheritance on the death of her husband's half brother's widow, but her maintenance rests with the grandson of the eldest son.—Zillah Burdwan, August 29th, 1823. Ibid. Case 12. (pp. 51—52.)

Q. A person brought an action, claiming his maternal grand-father's property, while his mother was living, and there was a possibility of her bearing more children. In this case, was the grandson entitled to a judgment for the property?

R. The plaintiff's mother has exclusive right to the property claimed, consequently the plaintiff cannot be considered in the light of an heir to the deceased, so long as his mother survives.

Zillah Twenty-four Pergunnahs.—Ibid. Case 15. (p. 57.)
Q. A landed proprietor died, leaving two widows and two daughters by different wives. Some time after the widows died, and on their death the first wife’s daughter who is a childless widow, and the second wife’s daughter who is mother of two sons, jointly possessed the estate, and equally shared the produce of it. The daughter who is a childless widow, disposed of a moiety of the estate by a deed of gift in favor of her own spiritual teacher (guru,) for the benefit of her deceased father. In this case, has the deed of gift validity or otherwise?

A childless widowed daughter is excluded by a daughter who has male issue.

R. Under the circumstances stated, the childless widowed daughter has no right to any part of the paternal estate, even though she enjoyed the moiety of its produce, consequently, the gift, which was made without the sanction of her half-sister and her sons, is illegal. This is conformable to the Dáya-bhága and other legal authorities.

 Authorities.—

Therefore the doctrine should be respected, which Dikshita maintains, namely, that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one who is a widow, or is barren, or fails in bringing male issue, as bearing none but daughters, or from some other cause.—The Dáya-bhága.

The doctrine maintained by Dikshita, and respected by the author of the Dáya-bhága, namely, that in default of daughters having, and daughters likely to have, male issue, daughters who are barren, or widows destitute of male issue, are incompetent to take the inheritance, because they can not benefit the deceased owner by offering (through the medium of sons) the funeral oblation at solemn obsequies, should be understood.”—The Dáya-krama-sangrahá.

Calcutta Court of Appeal. *Ibid.* Case. 16. (pp. 57. 58.)

Rám-dhan Sen versus Krishnà-kánta Sen.

**Case** bearing on the vyavasthás Nos. 63&64.

Rám-prasád had six wives, four of whom died childless. By his wife Parameshwari (one of the two surviving wives) he had a daughter named Sarba-mangalá, mother of the plaintiff, and by his other (surviving) wife, Padma-mukhi, also, he had a daughter named Krishnà-priyá, mother of the defendants. The plaintiff, after the death of his own maternal grandmother, maternal grandfather, and Padma-mukhi, the other wife of
his maternal grandfather, sued the defendants for half of the estate left by his maternal grandfather.

The Zillah judge dismissed the claim; and two of the Judges of the Dacca Provincial Court awarded to the appellant (plaintiff) possession of the share claimed.

The Sudder Dewanny Adawlut, having consulted their paṇḍīts, who declared the gift invalid, and the maternal grandsons (whether by different mothers or not) entitled per capita and not per stirpes, amended the decree of the Provincial Court, and ordered the property to be divided into three equal shares, and one to be given to the plaintiff, and one to each of the two defendants, grandsons of the deceased proprietor.—17th July, 1821. S. D. A. R. Vol. III. page 100.

See the case of Jaga-mohan Mookerjee and Gopi-mohan Mookerjee versus Pashchāna chatterjee and another, (7th June 1825. S. D. A. R. Vol. IV. p. 67,) in which the estate of a deceased proprietor was awarded to the sons of his daughter in preference to the grandsons by lineal descent in the male line of his full brother.

Case bearing on the vyāvasthā No. 65&66. Rām-joy Shīr claimed from his (paternal) uncle and his widow as the persons last seised. The aunt shortly before survived the uncle, whose patrimonial estate it was; but in the course of the examination, it came out from the petitioner that his uncle and aunt had left an only daughter surviving them, who was married to a person of the name of Naba-kishor, and who had a male child by him, which male child survived the mother from eight to fifteen days.

The paṇḍit declared,—"If there had been no issue of the uncle's daughter surviving its mother, the property, on the daughter's death, would have gone away from her husband Naba-kishor, to the complainant, as next heir of the uncle; but as the daughter had male issue, which survived her, the estate descended to such male issue on whose death Naba-kishor, the father, took, as heir at law to his son. The petition was accordingly dismissed.—12th June 1816. East's Notes, Case 58.

ON THE FATHER'S RIGHT OF SUCCESSION.

67. On failure of the daughter's son (s), the succession devolves on the father.*

REASON. Because he confers benefit (on the deceased son) by presentation of two oblation-cakes, (one to the grandfather, and the other to the great grandfather of that son,) in which the deceased participates.

AUTHORITY. I. The texts of Vishnu and Jagnyavalkya. See ante, pp. 23, 24.

II. After partition, if a son die leaving no son (k), the father takes the (deceased son's) property.†—Katyayana.

(s) Here the expression "failure of daughter's son" means the circumstance of a daughter's son not being born, as well as the failure of such daughter's son as was not vested with the succession, since on failure of a daughter's son vested with succession, his own heir shall succeed to the estate (and not the heir of the former owner.)

(k) Here the term "leaving no son" comprehends the failure of heirs as far as the daughter's son.

Vachaspati Miera, (and others) by adopting a different reading in the text of Vishnu, viz.—"The wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters: if there be none, it belongs to the mother; if she be dead, it appertains to the father."—have declared the mother's right of succession to precede that of the father. This is not correct; for the reading established by the original text of Vishnu, is the reverse (of that which they have adopted,) namely: "If there be none, it belongs to the father; if he be dead, it appertains to the mother." It has also been thus transcribed by all authors. Besides, the other reading is at variance with the text of Katyayana above cited (Dā. kra. sang. p. 11.)

---


† This text is inaccurately translated in Winch's Daha-krama Sangraha, p. 11, and Colebrooke's Digest, Vol. III. p. 596.
This is a result too of reasoning—that the father’s right of succession should be after the daughter’s son, and before the mother, because the father is preferable to the mother and the rest, by reason of presenting (personally) to others two oblation-cakes in which the deceased participates; and his superiority is indicated in a passage of Manus: “In a comparison of the male with the female sex, the male is pronounced superior” (9, 35;) and in the term “pitarou, both parents,” the priority of the father is indicated: for the father is first suggested by the radical term pitri; and afterwards the mother is inferred from the dual number, by assuming, that one term (of two which composed the phrase) is retained; and because the prior succession of the mother would contradict the text of Vishnu: “If there be none, it belongs to the father; if he be dead, it appertains to the mother.” (Jaimala-vahana. Dā. bhā. p. 195.)

The reading approved by Jaimala-vahana must be followed in the text of Vishnu;* for Jântavalkya declares: “if two texts differ, reason must in practice prevail, when the reason of law can be shown.”—Vide Coleb. Dig. Vol. III. p. 505.

Cases

bearing on the vyavasthā No. 67.

I. Krishna-gobinda Sen versus Lādī-mohan Thakur.

Ante, p. 137.

II.—East’s Notes, Case 58.—S. C., 12th June, 1816. Ante, p. 185.

On the Mother’s right of succession.

Vyavastha. 68. In default of the father, succession devolves on the mother.†

Reason. Because she confers benefits on him by the birth of other sons who offer three oblation-cakes in which he will participate. And because it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb, and nurturing him during his infancy.‡

Dā. bhā. p. 196.

‡ Ten months the mother bore her infant in her womb, suffering extreme anguish
VYAVASTHA-DARPANA.

Authority. Immediately after propounding the father’s right to the estate, Viṣṇu’s text declares: “If he be dead, it appertains to the mother.” (Dā. bha. p. 196.) And the text of Viṣṇapati declares: “Of a deceased son, who leaves neither wife nor son (a), the mother (i), must be considered as heiress or by her consent the brother may inherit.” (Dā. bha. p. 194.)

(a) By the expression ‘leaving neither wife nor son,’ is here meant to indicate the failure of heirs down to the father inclusively.—See Dā. bha. p. 194.

(i) By the term ‘mother’ is here intended the genitrix alone. Hence,—

Vyavastha’. 69. The step-mother is not entitled to inherit.*

After the death of a mother who has inherited the estate of her son, the heirs of her peculiar property shall not take the succession, but the heirs of the son. Therefore,—

fainting with travail and various pangs, she brought forth her child. Loving her son more than her life, the tender mother is (justly) revered: who could repay her, even though he tried a hundred years!—(Brāh.). A mother surpasses a thousand fathers, for she bears the child in her womb, and nourishes it; therefore is a mother most venerable. A (more) Aćchāriya surpasses ten upādhyāyas: a father, a hundred such Aćchāriyas; and a mother, a thousand (natural) fathers.—(Manu.)

But although the mother is pronounced to surpass the father in the degree of veneration due to her, yet the notion that the mother’s right should precede the father’s, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father; since it is said “of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father;” and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore, the mother’s right of succession is after the father (Dā. bha. pp. 196 & 197.) This is the opinion of Jīvānā-sāhāsī respected in Bengal. The author of the Viśdā-bhaṅgeṛyavīva is of the same opinion, and has founded that opinion almost on the same grounds. Thus:—“Title to respect is no cause of inheritance; were it so, who could take the estate while both parents exist? But benefits conferred by his own act, and near relation by the funeral cake, are the grounds on which rests the claim of an heir; now, the father is superior by the benefits which he confers; therefore he has the right of succession, even though the mother be living.” (Coleb. Dig. Vol. III. p 505.) Such is also the opinion of the other authorities of the Bengal School.

* Dā. bha. Ch. IX. Sect. 6, para. 4. (p. 213.)
VYAVASTHA-DARPANA.

Vyavastha. 70. Like the widow, the mother also cannot, without an allowable cause or legal necessity, alienate the inherited property, which on her death is to devolve on the other heirs of her son.*

This also is affirmed by the learned to be the opinion of Jmūta-vāhaka. Mīra also asserts that she has not power to give away, or otherwise alien, property which devolves on her.*

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. A minor dies, leaving his mother and four paternal uncles him surviving, and some property, which was joint and unseparable from that of his uncles. In this case, of these individuals, on whom does his share of the undivided estate devolve? If, according to law, the mother has a life-interest in it, is she entitled to obtain the value of a wall of his dwelling house, usurped by one of her husband’s brothers?

R. Supposing the minor to die, leaving no heirs, down to the father, his mother will take the entire estate, whether consisting of moveables or immoveables; and where there is a mother living, the paternal uncles have no title to the inheritance. The uncle who has taken possession of the wall, which was in common, is to pay the value of the deceased’s portion thereof to the mother, as she is the sole heir of her son.

Authorities:—

Jānyavalkya says: “The wife and the daughters, also both parents.” &c. (See ante, p. 23.)

Vṛiharpati says: “Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heir: or by her consent, the brother may inherit.”


Q. 1. A person had three sons by his two wives. On the death of the second son, who was unmarried, the father divided his real and personal property between his surviving sons in equal portions. The

* Coleb. Dig. Vol. III. pp. 505, 506;—Macn. H. L. Vol. I. p. 25 & 26;—Elb. 1.a. p. 77. See the Vyavastha No. 27 and the authorities &c. as well as the cases bearing thereon. See also ante, pp. 98, 171 & 172.
two brothers separated from each other during the father's life-time and enjoyed their respective shares of the property. Shortly after the eldest son died, leaving a widow and two sons, one of whom did not long survive. At the death of the original proprietor, he left his second son, and his eldest son's widow and son, him surviving. The widow of the eldest son, together with her son, took possession of his share; and lastly her son, (that is, the grandson of the original proprietor,) died, and after his death also the widow continued in possession for some time of the share which had belonged to her husband; but now the younger son of the original proprietor is desirous of ousting the widow of the eldest son, and they are contesting about the property. Supposing the fact of the adjustment of the shares, and the partition of the property to have been made as specified, in this case, how will the estate of the original proprietor be distributed among the parties, that is, the younger son of the proprietor, and his eldest son's widow?

R. 1. If it be proved that the original proprietor made the partition of his estate as specified, then his younger son and his grandson's mother, (the widow of his eldest son,) are respectively entitled to the portions which he assigned to his sons.

Q. 2. Supposing the original proprietor to have had three sons by two wives, the second son to have died unmarried before his father, the eldest son to have died also before his father, leaving a widow and two sons, (one of whom subsequently died,) and then the original proprietor, without having made any division of his property, to have died before his younger son, and his eldest son's widow and son (who is since dead ;) in this case, of the survivors, that is, the younger son of the original proprietor, and his eldest son's widow, who is entitled to inherit his property; and if both, to what proportion is each of them entitled?

R. 2. On the death of the original proprietor, his son and grandson were entitled to inherit in equal portions, and on the death of such grandson, leaving no heir down to the father, the mother is successor; consequently the property left by the original proprietor will devolve both on his younger son and his eldest son's widow in equal shares.
VYAVASTHÁ-DARPANA.

Calcutta Court of Appeal, July 22nd, 1805. Debí-prasád Chatterjea vs. Sebá-dári Debí. Ibid. Case II. (pp. 60, 61.)

Q. After the death of Ratan-málá, first widow of Krishna-kishor, and of Nanda-kishor, the son adopted by her, without issue, who was heir to the two annas share left by them, was it the appellant, Náráyaṇí Debí, second widow of Krishna-kishor? or Rám-kishor, the son adopted by her, if he be really so? or the heirs of Krishna-gopál loy, full brother of Krishna-kishor? or the heirs of Gangá-náráyaṇ and Lakkhi-náráyaṇ, half-brothers of Krishna-kishor? And does the case turn at all on the legality or illegality of the adoption of Rámkishor by the appellant, Náráyaṇí Debí?

R. If after the death of Ratan-málá, first widow of Krishna-kishor, her adopted son Nanda-kishor, adopted under due authority from her husband, died without issue, Nanda-kishor's two annas go to the adopted son of Krishna-gopál, full brother of Krishna-kishor, (that is, to the cousin-german by adoption;) or to the second widow of Krishna-kishor, (step-mother by adoption;) or to the heirs of Gangá-náráyaṇ and Lakkhi-náráyaṇ, (half brothers of the adopting father.) If, however, the adoption of Rám-kishor, by Náráyaṇí Debí (the appellant,) be a good adoption, then Rám-kishor is heir to the two annas of Nanda-kishor. In the Shástras, there is no express prohibition, or sanction, of two adoptions: if it be the usage in Bengal to make two adoptions, the adoption of Rám-kishor is no doubt valid: and he succeeds to the two annas, as before stated. The reason why the step-mother of Nanda-kishor, that is, Náráyaṇí, the appellant, cannot succeed to his share, is, that in the Veda-bhága, and other authorities current in Bengal, wherever the word mátá, or mother, occurs, it is explained to intend jananí, or actual mother. These books do not authorise the step-mother's succession, but she should receive a maintenance from the person who takes the inheritance. In the books of the Dekhan viz., the Mitákhshára, &c. the word mátá implies both mother and step-mother: according to these, the step-mother would share.

Authorities:

Manú:—"The son begotten by a man himself in lawful wedlock, the son of his wife begotten in the manner before mentioned, a son
given to him, a son made or adopted, a son of concealed birth, or
whose real father cannot be known, and a son rejected by his natural
parents, are the six kinsmen and heirs.’ ‘Of the man to whom a
son has been given, according to a subsequent law, adorned with
every virtue, that son shall take (a fifth or sixth part of) the heritage,
though brought from a different family.’

Boudhána:—‘participation of wealth belongs to the son begotten
by a man himself in lawful wedlock, the son of his appointed daugh-
ter, the son begotten on his wife by a kinsman legally appointed, a son
given, a son made by adoption, a son of concealed birth, and a son
rejected by his natural parents.’

Gotama:—‘The son begotten by a man himself in lawful wedlock,
the son of a wife begotten by an appointed kinsman, a son given,
a son made by adoption, a son of concealed birth, and one rejected
by his natural parents, are sons who inherit property.’

Manu:—‘Of a son dying childless, (and leaving no widow,) the
mother shall take the estate; and the mother also being dead, the
father’s mother shall take the heritage.’

The term ‘mother’ mentioned in the texts (above alluded to) in-
tends ‘natural mother,’ for the terms ‘mother, grandmother, and
great-grandmother,’ &c., (in such texts as the following,) bear their
original sense of ‘his own natural mother,’ ‘father’s natural mother,’
and ‘(paternal) grandfather’s natural mother,’ and it is by those
terms that they are described as taking their places at the funeral
repaet. But the introduction of step-mothers and the rest to a place
at the periodical obsequies, is expressly forbidden. Thus the sage de-
clares, ‘whosoever dies, whether man or woman, without male issue,
for such person shall be performed funeral rites peculiar to the indi-
vidual, but no periodical obsequies.’ The Dáya-bhága. Nárória Debi
versus Har-kishor Roy. Sudder Dewanny Adawlut, December 24th,
1801. Ibid. Case 3, pp. 61—64.

Gadó-dhar Sarmá and Kóli-dás Sarmá versus Ajodhyá-
rám Choudhuri.

Case bearing on the vyavasthá No. 83.

Káshishwar, Hará-deb, Saha-deb, and Nil-kánta were
four brothers, living together. Káshishwar, by his
own industry, acquired a semindary, viz., 5 annas
of Purgunnah Choura, which, as yet, had not been divided. Káshi-
shwar died leaving his three brothers above mentioned, and five sons Rám-shankar, Rám-mohan, Krishña-kinkar, Keval-rám, and Ajodhyá-rám. Hara-deb then died, leaving a son, Charan-jit. Then Saha-deb died, without issue. Then died Keval-rám, fourth son of Káshishwar, leaving a son Krishña-náth and a widow Ranga-máni, mother of Krishña-náth. Rám-mohan then died, leaving two sons, Gadhá-dhar and Káli-dás. Then died Rám-shankar, leaving a daughter, Rájeshwari, and two sons of that daughter, viz. Rádhá-náth and Narsing. Then died Charan-jit, son of Hara-deb, without issue. Then died Krishña-kinkar without issue. Níl-kánta then died leaving a daughter, Khargeshwari, which Khargeshwari, after her father’s death, had a son Práy-náth. After this, in 1190, Krishña-náth died without issue. The survivors of the family at the time of the present suit, were Ajodhyá-rám son of Káshishwar, Gadhá-dhar and Káli-dás, sons of Rám-mohan, Gangá-máni widow of Keval-rám, Rájeshwari daughter of Rám-shankar, Rádhá-náth and Narsing sons of Rájeshwari, Khargeshwari daughter of Níl-kánta, and Práy-náth son of Khargeshwari. The question was, what division was to be made of the zemindary; and the following opinion was given by Rádhá-kánta Pañdit: 1st, there having been four brothers living together in one family, of whom Káshishwar was the eldest, if, without there being paternal inheritance, or without the use of joint property, or without the labour or assistance of the brothers, he (Káshishwar) acquired a zemindary, the other brothers would have no title to share in such zemindary. Should there have been a paternal inheritance, or an expenditure of joint funds, or should the brothers have lent their exertions, then, the zemindary being divided into five parts, Káshishwar, the acquirer, would take two, and the other brothers one each: 2nd, on the death of Káshishwar, his five sons inherit his portion, dividing it into equal parts; on the death of Káshishwar’s son Rám-mohan, his two sons, Gadhá-dhar and Káli-dás, inherit their father’s share, in equal portions: 3rd, the share of Káshishwar’s fourth son, Keval-rám, on the demise of Keval-rám’s son Krishña-náth, should Krishña-náth have left no daughter, falls to his mother Ranga-máni: 4th, on the demise of Rám-shankar (son of Káshishwar) his daughter Rájeshwari inherits her father’s portion, and on her death her two sons succeed her: 5th Káshishwar’s son, Ajodhyá-rám, being alive at the decease of his brother Krishña-kinkar, should the latter not have left a mother, his full brother Ajodhyá-rám receivea his portion:
6th, on the death of Kāshīkṣwār's brother Hara-deb, his (Hara-deb's) son Charan-jit inherits his father's portion; and on his decease, should he have left no brother, his father's full brother, Nil-kānta, the only survivor, will be entitled to that share: 7th, on the death of Kāshīkṣwār's brother Saha-deb, should he (Saha-deb) not have left a mother, his full brother Nil-kānta will inherit his share, and on the death of Nil-kānta, his daughter Khargeshwari will inherit her father's portion. It appears to have been asserted that Nil-kānta had resigned all concern in the zemindary, and the three females, Rājeshwari, Ranga-mañi, and Khargeshwari, received a maintenance; the two former in lieu of their shares, which they had resigned. And a further opinion was taken on the point, which was this, "supposing that the male sharers contributed to the maintenance of Ranga-mañi, if she (Ranga-mañi) did not renounce her claim, she will, at a division, be entitled to the share of Krishṇa-nāth, her son. If Rājeshwari received some lands, and renounced her claim to share, she will not be entitled to her father's share; but if she reserved her claim, then she will be entitled to her father's share. If Nil-kānta, the father of Khargeshwari relinquished his share on condition of receiving a maintenance, Khargeshwari will receive the same." But evidence examined as to the facts, on the supposing of which this opinion was taken, did not prove them, and there was ground to presume that the contrary was the case. The Sudder Dewanny Adawlut (present Sir J. Shore, F. Speke, and W. Cowper) determined that the decree of the Dinajpore Adawlut (from which the case came before them in appeal,) and which adjudged to Ajodhyā-rām, (who sued for a division of the zemindary) 3 annas, and 6 gandas, of the 5 annas, should be set aside, that the 5 anna zemindary, in pursuance of the Pandit's opinion, should be adjudged to the heirs of the four brothers, Kāshīkṣwār, Saha-deb, Hara-deb, and Nil-kānta, in the following proportions; viz., to Khargeshwari as heir to her father Nil-kānta, the shares of Saha-deb, Hara-deb, and Nil-kānta, 3-5ths, and to the heirs of Kāshīkṣwār 2-8ths, these to be allotted to the heirs of Kāshīkṣwār in the following proportions, viz., to Gado-dhar and Kailā-sas, appellants, 1-5th, to Ajodhyā-rām, the respondent, 2-5ths, to Ranga-mañi 1-5th, and the same to Rājeshwari.*—30th October, 1794. S. D. A. R. Vol. I, p. 6.

* The law opinion and decision in this case are practical illustrations of a number of points of Hindu law, neither intricate nor uncommon, 1st, the allotment of a double share to
VYAVASTHA-DARPANA.

See also the following Cases:—


Bhoirabī Dāsī versus Naba-kṛishṇa Bose.

Cases bearing on the vyavastha. No. 69.

1. Ratan-māṇi inherited the estate of her son Khyetra, who died unmarried and childless. After Ratan-māṇi's death, Bhoirabī Dāsī the step-mother of Khyetra claimed the estate. Held that on the death of Ratan-māṇi the property devolved on her son's heir, who, in this case, was the son of the paternal uncle of his father, and not on his (Khyetra's) step-mother, since, according to the law which prevails in Bengal, a step-mother does not inherit from her step-son, but is entitled to maintenance from her husband's property.—23rd February, 1836. S. D. A. Rep. Vol. VI, p. 53.

Case no.—251 of 1851.


Judgment.

II. The (Zillah) Judge has declared that the step-mother has no right to sue. This opinion is based on the bywasthas (Vyavasthās) of two of the Pundits, which he preferred to two bhwasthas also filed. The Appellant being called on for legal authorities in opposition to the Judge's decision, produced none; but the Respondents produced a decision of this court, Dated 23rd February, 1836, page 53, Volume VI, Sudder Dewanny Adawlut Reports, Bhurube Dassy versus Nub-kishen* in which it is distinctly ruled that a step-

the person by whom acquisition is made, with aid, however, from the joint funds (Vide Def. 1st. Ch. VI. Sect. 1, para. 28;) 2nd, equal participation of sons succeeding to their father. (Ibid. Ch. 3. Sect. 2, para. 27;) 3rd, the mother's succession to her son leaving no widow, nor issue male or female (Ibid. Ch. XI. Sect. 4;) 4th, the daughter's succession to one leaving neither male issue, nor a widow, provided such daughter be mother of a son or likely to become so (Ibid. Ch. XI. Sect. 2, para. 3;) 5th, the full brother's inheritance from his brother (Ibid. Sect. 5;) 6th, the uncle's succession on failure of nearer heirs. (Ibid. Sects. 6, 5, 8 & 9.)

* That is the precedent immediately preceding.
mother does not inherit from a step-son. He refers also to page 62, Volume II, Macnaghten's Hindu Law, in which the same rule is laid as a general principle, viz. that under the law of the Dáya-bhága, which is applicable to this Case, the step-mother has no right to succeed. In a note to the Case of Náráyaní Debi versus Hari-kishor Roy, decided, Sudder Dewanny Adawlut, 24th of December, 1801, the same principle is more emphatically expressed. On the whole, there is every reason to believe that the decision of the Judge, that the suit will not lie, is correct, because the authorities declare that the plaintiff (the step-mother) has no personal interest in the matter at issue: the special appeal is therefore rejected with costs, and the decision of the lower court affirmed.—The 23rd of June 1852. S. D. A. D. page 563.

The same Principle was held in the following Cases:—


Káli-kánta Láhuri Appellant versus Gokak-chander Choudhuri Respondent.

Cases bearing on the vyavasthá No. 70.

I. The plaint sets forth, that Rám-shankar Choudhuri, uncle of the plaintiff, died leaving his wife Kumári Debi, and son, Bhabáti-shankar, a minor; and then the plaintiff's father, Gobinda-chander Choudhuri died, leaving him his heir. Subsequently, Bhabáti-shankar, died an infant; that Kumári Debi obtained a decree against the plaintiff and others; and, under this decree, she holds her husband's, Rám-shudar's, estate, which, as his legal heir, plaintiff is entitled to; that Kumári, as Hindu widow, has no power to sell or to make over in gift the estate, she being entitled to maintenance only; that she, in collusion with Káli-kánta Lákuri, defendant, (who is her manager and an enemy of plaintiff,) fraudulently endeavours to deprive the plaintiff of his inheritance; and so forth.

The principal Sudder Ameen, in his decision, held, in reference to fall bench decision of the Moorshedabad provincial court, (Gobinda-
prasad Das versus Chit-bahi, &c., Respondents,) of 14th March, 1838, and a Vyavastha of the Paydut of the Dacca Court, therein referred to, that a widow has only a personal life tenure; and that her possession can be set aside, on adequate proof of waste or misconduct, by the next heir. As to the collusion between Kumari Debi and Kuli-kanta Lakuri, or a reasonable fear of it, the Principle Sudder Ameen said that it appeared, from the copy of the Collector's chaloon on account of Dhanibil, of 13th Pous, 1250 B. S., for 111 rupees, and copy of plaintiff's petition to the Collector of the same date, that plaintiff paid that sum to save the estate from sale for Kumari Debi's default; and that also from copy of a petition of the plaintiff, of 9th Boishakh, 1251, to stop the sale of the putnee talook of Dhanibil, and the advertisement of the Khana-bari of 18th Krtik, 1243, and the evidence of three witnesses, it appeared that Kumari Debi had been permanently giving putnee pattahs to her relatives, and threw Dhanibil wilfully into default, and the plaintiff had to pay to save the property; that she also involved herself heavily in debt, and that it was in consequence of this improper embarrassments that the conditional sale, under a decree, to Kuli-kanta Lakuri became necessary. How could she not have paid the inconsiderable amount of 200 rupees for costs and fees, for which amount half the Khana-bari was sold?

The Principal Sudder Ameen was, upon these grounds, satisfied that the plaintiff was entitled to be placed in possession of the properties sued for. There having been waste and injury by Kumari Debi, and she having ceased to live with her husband's family, she was declared to be entitled only to maintenance from the plaintiff.

Judgment.—The appellant now before us, is the purchaser, at a sale in execution of a decree against a Hindu widow, of her life-interest in landed property belonging to her husband's estate, which devolved to her in succession upon his death.

There is no proof on the record, that the debt for which the sale took place was other than a personal debt of the widow, or that that debt was, in any way, incurred for the purposes of her necessary maintenance. The essential point for decision, therefore, is whether a Hindu widow in Bengal possesses such a life-interest in the estate left by her husband, as is capable of transfer by her own assignment, or by seizure for her debts, independently of the necessities of her maintenance, or
of the performance of any duty in regard to her husband, as of acts designed for his spiritual benefit, or of the payment of his debt.

The authorities appear, upon this point, to be distinct and conclusive against the claim of the appellant. Sir W. Macnaghten, (in his Hindu Law, pp. 19, 20,) states his opinion that a widow can be considered in no other light than as a holder in trust for certain uses; and again, in a note furnished by him to the Judges of the Supreme Court (See Morley's Digest, Volume II, part 2, pp. 154, 155,) he has observed:—

"A widow has no unlimited proprietary right over any part of her husband's property, but merely a general usufructuary right over the whole indiscriminately. It is clear, therefore, that she cannot convey the whole in perpetuity; but the deed by which she conveys it is void ab initio as to the sale; nor can it convey the interest which she possesses, which (independently of its not being transferable) is an interest of a totally different nature from that of proprietary right." There is also an elaborate review, in a judgment of Sir E. H. East, of 11th August, 1819, (Morley's Digest as above, pp. 198 to 219,) of the whole law in regard to the rights of widows over estates devolving to them from their husbands. In this, though he had not occasion to refer specially to the question of whether a widow's life-interest is, or is not, capable of transfer, he yet distinctly implies that a husband's property passes to his widow only for her personal use and enjoyment. In Elberling's Treatise on inheritance, &c., the text of the Dāya-bhāga and Dāya-krama-saṅgraha, and the decisions on all parts of the subject have been carefully collated. He states their result, as follows:—"Generally the widow cannot make gifts, or sell, or mortgage the property; but when a sale or mortgage becomes necessary for any indispensable duty, religious or secular, or for her maintenance, it is valid; and whenever gifts are made, or the property is sold or mortgaged, for the spiritual benefit of her husband, it is valid, because the heir takes the wealth for that purpose, and not for his own benefit. The payment of his debts is a moral as well as a legal duty, &c.," and, expressly to the present point:—"As the life-interest is only given her for a special purpose, viz. for her maintenance and for the spiritual benefit of her husband, she cannot even transfer the use* or the possession of such

---

* Sir T. Strange says also, (Vol. I. p. 246.) with respect not only to what she may have inherited from her husband, but to its accumulated savings also, her (a widow's) duty is to regard herself as little more than tenant for life, and trustee for the next heir.
property during her life-time: her right is absolutely personal." He refers in a note, to an opinion given by the Law-officers of this Court in the case to which Sir E. H. East's judgment, before mentioned, referred to the effect, that gifts by a widow for other than an allowable cause might be valid as against herself, but not as against her husband's heirs. In the present suit, the party reclaiming against the transfer of the widow's life-interest, is her nephew,—the next heir, upon her demise, to her husband. We are of opinion, upon these grounds, that no interest passed to the appellant upon his purchase at a court sale, which can be confirmed to him in opposition to the claim made in this suit, and we accordingly dismiss the appeal with costs. There were allegations of waste and fraud on the part of the widow, in reference to which the Principal Sudder Ameen, in this decree, has adjudged that the plaintiff, the next heir, shall obtain possession of the property held by the appellant before us, as well as other properties which had passed to the widow from the husband, providing only a suitable maintenance for her. The widow also at first appealed to this Court, but subsequently allowed the appeal to be struck off on default. We have not therefore to notice the decree as it affects her.—30th of October, 1849. S. D. A. R. pp. 405—410.


II. Dhan-maṇi, having succeeded as nearest heir to her deceased son, alienated the inherited estate, first by gift, and subsequently by sale. The Pandits of the Sudder Court being referred to gave their opinion to the effect—"That the right which a mother had in the property inherited from her son, was the same as that which a widow had in the property inherited from her husband: and that, therefore, she was incompetent to alienate that property by gift. That the sale of it also was invalid, because, the deed expressly stated the sale to have been executed by Dhan-maṇi at her own pleasure, whereas the shāstra prohibited sale at pleasure, and only licensed it under unavoidable necessity, which did not here exist; that both the gift and sale being invalid, the succession to the estate would be regulated by the analogy of the case of a widow, that is, as the nearest surviving heir of the
husband inherits from the widow, so the nearest surviving heir of
the son would inherit from the mother; and that the nearest surviving
heirs in this case are the appellants who are the sons of his father's
brother.” Authorities—Dáya-bhága: “The word wife is employed
with a general import; and it implies that the rule must be understood
as applicable generally to the case of woman's succession by inheri-
tance.” The Sudder Court (present Messrs. Sealy and Rattray)
considered the Vyavasthá decisive as to the right of the appellants to
the portion which had devolved to Dhan-maṇi.—26th May, 1823. S.

III. In the case of Musst. Bijoyá-Debí versus Anna-púṇḍá Debí
(S. D. A. Rep. Vol. I. p. 164,) regarding property which had devolved
on a mother by the decease of her son, the Law-officers of the Sudder
Dewanny Adawlut held, that the rules concerning property devolving
on a widow, equally affect the property devolving on a mother. On
her death property devolves on the heirs of her son, and not on her

IV. The mother and widow of a Bráhman by amicable settlement
divided between them his property, consisting of Devottar land and
right of officiating in a temple, reserving to each the power of alienating
her own share. Such partition is declared invalid by the Hindu law, in
consequence of the incompetency of the parties, and the sale executed
by the mother (who even by such settlement and division could derive
no interest in her son's estate during the life of his widow) set aside.
Musst. Joy-mañi Debí and another versus Fakir-charṇ Chakrabarti,

Vyavasthá. 70. The mother also cannot be put out of
possession or management of her inherited
property without a satisfactory proof of waste; and she cannot
be dis-inherited even on proof of waste. But the wasteful
alienation being invalidated, the subject thereof should be re-
sumed by, or restored to, her.

Inasmuch as the reversioners, whose succession is contingent on her
death, cannot take her son's property while she lived free from any
defect causing exclusion from inheritance.
No 920 of 1857

Musi Lodhu-monó Dási (one of the defendants) Appellant versus
Ganesh-chander Dutt and Krishna-chander Dutt (Plaintiff's) Respondents.

Judgment.

Case

As this appeal has been argued on the part of the
mother only, who has been excluded from enjoyment
of property of her son for the reasons given by the
principal Sudder Ameen in his Judgement, we have merely to deter-
mine whether they are legally sufficient to exclude the appellant or not.

The Principal Sudder Ameen relies on his judgment upon con-
struction 942 as authority for holding the appellant bound to be
satisfied with the maintenance of Rupees 10 per month provided by the
will, and on the Sudder Court's decision of the 24th January, 1854, as
excluding her from possession of the estate on the ground of waste.
But neither of the authorities can have any reference to the circum-
stances of this case.—

The part of construction 942, which we suppose the Principal Sudder
Ameen deemed applicable to this case, is contained in the following
question, on which the ruling there promulgated is founded.

That question was: "Can a person, who still holds, or within 12
years has held, possession of a portion of land in an ancestral un-
divided estate as maintenance, claim to have the estate divided, and
his specific share allotted to him, or can the circumstance of his having
been content with a maintenance, and not having received a specific
portion for a period exceeding twelve years, bar his claim to a se-
parate possession of his own share whenever he thinks fit to demand
it? The circumstances on which the question is raised are so
terely dissimilar from those we have before us, that the ruling on
the point need not be gone into. Had the will been in force, and had
the mother at some time sought to enforce the rights, the question as
to how far she was bound by the acceptance of a maintenance during
a period of years, and precluded from disputing the will might have
arisen; but the point is not one we have to consider in this light in
the present case, and, as the case stand in the present record, the
construction is not applicable.
The second authority quoted by the Principal Sudder Ameen is the
decision of this Court of the 24th January, 1854, which decision dis-
possessed a Hindu widow from her husband's estates on proof of waste.
But the Court in that judgment did not substitute an allowance to
the widow for her maintenance, but, on the contrary, provided that
her husband's heirs were bound to account to her for all receipts
from the property, and merely placed them in possession as her trustees.
The precedent, therefore, even if the facts proved waste on the part
of a female holding a life interest only, does not support such a
decision as the principal Sudder Ameen has given, namely, to vest
the plaintiffs, as next heirs of the late proprietor, with uncontrolled
power over the property, and payment to the mother of a monthly
allowance of Rs 10.

But we do not see that the facts found by the Principal Sudder
Ameen support a charge of waste. His reasoning is, that the mother,
by supporting in the reply the spurious will, under cover of which
Anant-rám has committed waste, is a party thereto, and is subject to
the penalty of one who, in her situation as tenant for life, commits
waste. But even to the extent here assumed, the facts on record do
not bear out the Principal Sudder Ameen’s conclusions. Independent
of Anant-rám’s authority being of a limited nature, the sales effected
by creditors are only of his rights and interests; and it is very ques-
tionable, whether they could by their own terms, convey any portion
of Rákhál Dás’s estate; but, at the same time, it is impossible to
presume that the mother's object, in ascertaining to the will, was to fur-
ther any scheme of Anant-rám in alienating the property. So far as
the will goes, she derives no such power under it; it is, therefore,
difficult to conceive how the mother’s acceptance of it can be held
to be indicative of fraudulent intent regarding transfers, the validity
of which the will itself would not support.

On the whole, then, we are satisfied that the record contains no
proof of any fact which justifies the exclusion of the mother as heir
of her son, and warrant the immediate entry of the nephews as heirs
into the estate left by Rákhál Dás. The effect of the lower court's
decree, therefore, must be limited to the cancelment of the spurious
will, and the order for immediate possession by the plaintiffs must
be reversed.—18th of April, 1859 S. D. A. D. pp. 436—438.
ON THE SUCCESSION OF THE FATHER’S SON, GRANDSON, GREAT-GRANDSON
AND DAUGHTER’S SON.*

Vyavastha. 71. In default of the mother, succession devolves on the brother.†


The uterine brother is, however, first entitled to inherit, for although brothers of the whole and half blood are begotten by the same father, yet as the uterine brother offers oblation-cakes to six ancestors of the deceased, the succession first devolves on him exclusively, and not on the brother of the half blood, who offers oblation-cakes to (his) three ancestors only.—Dāya-tattva, p. 51.

Vyavastha. 72. If there be no uterine brother, the half brothers are entitled to inherit.†

Authority. Because they offer three oblation-cakes to the father and two other ancestors of the late proprietor (Dā. kṛṣ. sanq. p. 13;) and because they also are signified by the word "brother," being issue of the same father.—(Dā. bhā. p. 200.)

Vyavastha. 73. But the whole and half brothers are equally entitled to an undivided immovable estate.‡

Authority. Jāma says: "whatever immovable property may remain undivided, that appertains to all (e); but the divided movables must on no account be taken by the half brother.‡

(e) "All"—that is (all) the brothers, whether of the whole or half blood. (Dā. bhā. p. 211.)—The meaning is that if any immovable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in co-parcenery, the half brothers shall have equal shares with the rest, but the uterine brother has the sole right to the divided property movable or immovable.—Coleb. Dig. Vol. III. p. 518.

* In other words: "On the succession of brother, brother’s son, brother’s grandson, and sister’s son."


Vyavastha. 74. On the death of one who has received the inheritance of his brother, his own son or other heir takes the succession. *

Authority. Not the son of any other brother; for it is no longer the property of his (deceased) uncle, the estate having already devolved on a collateral relation. *

Vyavastha. 75. If both the uterine and half brother were not re-united (with the deceased owner) after separation, then the uterine brother exclusively takes the estate of his uterine brother. †

Authority. In conformity with the text: ‘The uterine brother shall take the estate of his uterine brother.’ †

Vyavastha. 76. If there be a re-united half brother, and an un-re-united whole brother, then both (equally) take the estate. †

Authority. In conformity with the text: “But a half brother being again associated may take the succession,” and so forth. †

Vyavastha. 77. If the uterine and half brothers both were re-united (with the deceased) then the re-united whole brother exclusively takes the inheritance. †

Authority and reason. Because (in this case) he possesses a double title, (namely, his being uterine, and also re-united;) and in conformity with the text: “A re-united (co-heir) shall keep the estate of his re-united co-parcener, (who is deceased.) †

Vyavastha. 78. Among the whole brothers, if one be re-united after separation, the estate (of the deceased) belongs to him. ‡


VYAVASTHA-DARPANA. 205

Vyavastha 79. If there be only half brothers, the property of the deceased must be assigned in the first instance to the re-united one; but if there be none such, then to the half brother (or brothers) not re-united.

Vyavastha 80. Among brothers, who become re-united, through mutual affection, after being separated, there is no right of seniority, if partition be again made. Vrihaspati. See Dá. bhá. p. 164.

Authority. Here the denial of right of seniority must be understood as relative to the re-united parencers of the three superior tribes, the right of primogeniture being always denied among the Shádras—Dáya-tattva. p. 56.

Such is also the case in the succession of the nephews of the whole and half blood.—See Dá. kra. sang. p. 15.

Vyavastha 81. A brother’s son has not an equal claim with a brother.*

Authority. Because the whole brother who is the giver of six oblation-cakes, and the half brother who is the giver of three oblation-cakes, which it was incumbent on the late owner to give, confer more benefit than the brother’s son, who is but the giver of two oblation-cakes which the late proprietor was bound to offer (to his father and paternal grandfather) Jimúta-váhana concurs herein.*

Authority. Vishnu says: “If he be dead, it goes to the brother’s son,” &c. † Here the word “he” must relate to the nearest term “brother.” *

And Jánivyavalkya intimates, that in default of brothers, their sons inherit, † by saying, on failure of the first of these, the next in order takes the estate.*


IV. In the case of Ráj-chander Dás versus Dhamma-mání, (Sudder Dewanny Adawlut Reports, Vol. III, p. 362) it was determined, that according to the Hindu Law as current in Bengal, on the death of a widow who had claimed her husband’s property, her daughter will inherit, to the exclusion of her husband’s brother, if the daughter have, or is likely to have, male issue, and on her death without issue, her father’s brother will inherit to the exclusion of her husband. Macn. H. L. Vol. I, pp. 22, 23.

Ráj-chander Sarma versus Gangá-gobinda Banarjea.

Case bearing on the vyavasthá No. 72.

A Hindu, through his mother, succeeded to his maternal grandfather’s estate, and died leaving a widow and a half brother; and was succeeded by the widow, who enjoyed the estate during life. On her death, her husband’s half brother sued for the estate. Held that at the death of the widow, the plaintiff, as half brother, was entitled to succeed to the property left by her husband, to the exclusion of her maternal grandfather’s brother’s grand-children.—1st February, 1826. S. D. A. R. Vol. III. p. 117.

Cases bearing on the vyavasthá No. 81.

I. In the case of Rudra-chander Choudhuri versus Shambhu-chander Choudhuri, (Sudder Dewanny Reports, Vol. III, page. 106,) a question arose as to the relative rights of a brother and a brother’s son to succeed, on the death of a widow, to the property which devolved on her at the death of her husband, they being the next heirs. The Pandits at first declared, that a brother’s son (his father being dead) was entitled to inherit together with the brother. But this opinion was subsequently proved and admitted to be erroneous. In the succession to the estate of a grandfather, the right of representation unquestionably exists; that is to say, the son of a deceased son inherits together with his uncle: not so in the case of property left by a brother, the brother’s son being enumerated in the order of heirs to a childless
person's estate after the brother, and entitled to succeed only in
default of the latter. In the case in question, the deceased left two
brothers and a widow, and the widow succeeding, one of the brothers
died during the time she held possession. The son of the brothers
who so died claimed, on the death of the widow, to inherit together
with his uncle, and the fallacy of the opinion which maintained the
justice of his claim consisted in supposing, that on the death of the
first brother the right of inheritance of his other two surviving brothers
immediately accrued, and that the dormant right of the brother who
died secondly was transmitted to his son. But, in point of fact, while
the widow survived, neither brother had even an inchoate right to
inherit the property, and consequently the brother who died during
her life-time could not have transmitted to his son a right which

II. The same doctrine was maintained in the case of Must
Joy-mani Debi versus Râmjoy Choudhuri.—S. D. A. Repts. Vol. III.
page 289. See ante, pp. 140—144.

82. On failure of the brother of the half blood,
the succession devolves on the brother's son.*

ReasoN. Because he offers two oblation-cakes to the father
and grandfather of the (late) owner.

AuThoRiTy. I. The texts of Vishnu and Jágnyavalkya. (See
ante, pp. 23, 24.)

II. If, among the several brothers of the whole blood, one have
a son born, Manu pronounces them all fathers of a male child by
means of that son. †—Manu, Ch. 9, V. 182.

83. The succession, however, devolves first on
the son of a uterine (or whole) brother, and
not on the son of the half brother.*

† The nephew's succession must however be understood to be on failure of heirs down
to the brother, in conformity with Jágnyavalkya's text: "The wife and daughters,
also both parents, brothers likewise, and their sons," &c. (ante, p. 23.) KulluKa Bhatta.
Because the mother (of the deceased owner) not participating in the oblations presented by the nephew of the half blood, to the deceased's father and grandfather, he confers less benefits compared with the son of the whole brother, and because the oblator's mother and the rest exclusively participate in the oblations presented by him to his father and the rest, respectively, as declared by the following text: "A mother tastes with her husband oblations (offered to the manes,) so also do the paternal grandmother and great-grandmother with their own husbands (respectively.)

Vyavastha. 84. After the son of the whole brother, the succession devolves on the son of the half brother.*

Authority. Indeed, the son of the half brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother, (who is a giver of oblations to the grandfather in conjunction with the mother of the deceased.)—Dā. bhā. p. 113.

Vyavastha. 85. Among the whole brother's sons re-united and not re-united, the succession devolves on the re-united nephew.†

Vyavastha. 86. In like manner, among the half brother's sons re-united, and not re-united, the succession devolves on the re-united one.†

Vyavastha. 87. But if the son of the whole brother were unassociated, and the son of the half brother re-united, then they inherit simultaneously.†

Vyavastha. 88. Where, however, both the whole brother's son and half brother's son were either re-un-

---

ted or not re-united, (with the deceased owner,) there in both instances the succession devolves on the nephew of the whole blood.*

**Remark.** In respect of immovable undivided property, no author has said that nephews of the whole and half blood have equal claims, by parity of reasoning, as in the case of brothers; and the text of the legislator is not explicit on this point.—Colcb. Dig. Vol. III. page 524.

**Vyavastha.** 89. If there be no brother's son, the brother's grandson is heir.†

**Reason.** Because he offers to the deceased owner's father oblation-cakes in which the deceased participates, and because he is within the degree of relationship termed sapinda.†

**Vyavastha.** 90. Here likewise the distinction of the whole and half blood, and that of re-united parceny and disjoined parceny must be observed.‡

**Vyavastha.** 91. If the nephews or son of nephews whose fathers and grandfathers are dead, be numerous, then in conformity with the rule regarding the relations of whole and half blood, and the re-united and disjoined parceny, they shall equally inherit the deceased owner's estate, which shall be divided among them with reference to their own number, and not to that of their fathers.§

**Reason.** Because they equally confer benefits on the deceased; and because there is no positive text ordaining that the right of representation exists in the succession of nephews and other heirs as in that of the grandsons.

---

§ See Macn, II. L. Vol. I. p. 27.
Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. A śūdra family consisted of three brothers, the eldest of whom died leaving two sons, the second a widow, and the youngest three sons. The youngest son of the eldest brother died leaving a son, and then the widow of the second brother. Now all of the survivors above mentioned claim a share of the widow’s estate. In this case, are they all entitled to the succession; and if so, what is the extent of their respective shares?

R. On the death of the widow of the second brother, the property left by her will be equally shared by all the sons of her husband’s brothers. The grandson of her husband’s eldest brother is excluded by them.

City of Dacca.—Macn. H. L. Vol. II. Ch. I. Sect. 5, Case 2, (p. 67.)

Q. I. A Brāhmaṇ had a family by his two wives; by the senior wife he had a son and three daughters, and by the junior four sons and two daughters. The father during his life-time made a partition of his property, and assigned five equal portions to his five daughters, and five to his five sons, and died. All the sons and daughters took possession of their respective shares of paternal estate. The four sons by the younger wife died, leaving no male issue, and their mother enjoyed her sons’ shares of the property, and died. Now there are the original proprietor’s grandson by his senior wife, and a daughter by his junior wife leaving. In this case, which of the survivors is entitled to succeed to the portions which belonged to the original proprietor’s four deceased sons by his junior wife, and which devolved on their mother by right of inheritance?

R. 1. Supposing the Brāhmaṇ to have divided his real and personal estate among his children, viz., a son by his elder wife, and four sons by the younger one, and five daughters, and the sons ‘to have enjoyed their respective shares, and the four sons by the younger wife to have died, leaving no heirs down to daughters’ sons, their mother was entitled to their assets. If at the mother’s death, their uterine sister and half brother’s son were living, then their half brother’s son is entitled to the succession, provided
there be no heir down to the whole brother's son existing, and the sister is excluded from participation.

Q. 2. Supposing the daughter of the younger wife to have borne a son, in this case, is the daughter's son entitled to inherit from his uncles?

R. 2. Where a sister's son and a son of the half brother are living, the former has no right of inheritance.

Zillah 24-Pergunnahs, December 20th, 1816. Ibid. Case 3, (pp. 67, 68.)

Q. There were four uterine brothers, who, having enjoyed their patrimony in common, died successively, leaving their respective heirs and representatives. The eldest brother, having been destitute of male issue, had selected one of the three sons of his second brother, and adopted him as his son after the mode prescribed by the law. Of the remaining two sons of his second brother, one died leaving a son, and the other is alive. The third brother left a widow only as his heir, and the youngest brother had four sons. The heirs of all the brothers enjoyed their respective shares of the property; and the widow of the third brother dying, there are her husband's eldest brother's adopted son, his second brother's son, and son's son, and his youngest brother's four sons surviving. Under such circumstances, in what proportions will these persons respectively be entitled to inherit the estate left by the widow of the third brother?

R. If the widow, having succeeded to her husband, (being the third brother,) died leaving his brother's five sons, an adopted son, and a grandson in the male line, according to the law of Manu, (who holds the first rank among legislators,) and other authorities, in the enumeration of the twelve descriptions of sons, the adopted son is ranked among the first six, who are heirs to collaterals; and agreeably to the law which is current in this district, an adopted son is entitled to a third share, consequently the property left by the widow of the third brother will be made into eleven parts; of which her husband's brother's five sons will take ten, or two shares
each, and the adopted son the remaining one. This is conformable to the law of Manu, the Udváha-tattwa, Dáya-krama-sangraha, Vivádárvava-setu, Dáya-tattwa, Dattaka-mimánsá, Dattaka-chandriká, commentary on the Dáya-bhágá, and other authorities.

Authorities.—

Manu says:—"Of the twelve sons of men, whom Manu, sprung from the Self-existent, has named, six are kinsmen and heirs, six not heirs, (except to their own father,) but kinsmen. The son begotten by a man (himself in lawful wedlock,) the son of his wife (begotten in the manner before mentioned,) a son given to him, a son made or adopted, a son of concealed birth or whose real father cannot be known, and a son rejected (by his natural parents,) are the six kinsmen and heirs." The text of Vrihaspati cited in the Udváha-tattwa: "Manu holds the first rank among legislators, because he has expressed in the code the whole sense of the Veda; no code is approved which contradicts the sense of any law promulgated by Manu."

The following is the doctrine laid down in the Dáya-krama-sangraha. "In the partition made between legitimate and adopted sons, legitimate son has two shares, and the adopted sons, who are of the same class with the father, take one share."

The Vivádárvava-setu contains the same reading as above. The author of the Dáya-tattwa concurs in the preceding observations, saying: "Among these (the twelve sons of men,) except the son of the body, he who is of an equal class with his adoptive father shall receive one-third of the father’s estate, where a son of the body is living."

"A given son abounding in good qualities (jathá-játa) existing: should a legitimate son be born at any time, let both be equal sharers of the father’s whole estate." That must be construed, as supposing the former possessed of good qualities, and the legitimate son destitute of the same: on account of the epithet "jathá-játa (abounding in good qualities.) He in whom there is ‘játa,’ that is, an assemblage (samáha) of good qualities. This is the meaning. This is laid down in the Dattaka-mimánsá.

"Of the man to whom a son has been given, adorned with every quality, that son shall take the heritage, though brought from a
different family." "With every quality,"—"class, science, observance of duties." This is the doctrine contained in the Daltaka-chandrikā.

It appears from the commentary on the Dāya-bhāga, the Dāya-krama-sangraha, Visādāryava-setu, and other law books, that only in default of a brother's son, his grandson in the male line is entitled to the succession.

Calcutta Court of Appeal.—Ibid. Case, 5, (pp. 69—72.)

Q. 1. Of five uterine brothers, the eldest, after a general partition, lived together with his second brother, and died childless. In this case, does the property left by the eldest brother devolve only on the son of his associated (second) brother, or on all the sons of his brothers?

R. 1. If of the separated brothers, two lived together, through mutual affection, as re-united in food and family, and one of such associated brothers died, leaving no nearer heirs, as son, and so forth, his property should devolve on his re-united brother only, on whose death, his son is alone entitled to the succession. The sons of the unassociated brothers have no title thereto.

Authorities:

The text of Jāngyavalkya, cited in the Dāya-bhāga and other works of law: "A re-united (brother) shall keep the share of his re-united (co-heir,) who is deceased; or shall deliver it to a son subsequently born." The term re-union is explained by Viṁhaspati: "He who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united."

Q. 2. Should the five brothers, having been separated, have all lived apart, and one of them have died leaving no male issue, in such case, on whom does his property devolve?

R. 2. In default of heirs down to the mother, his brothers of the whole blood are equally entitled to the succession. The authorities are laid down in the Dāya-bhāga, &c.

Authorities:

Devala:—"Next let brothers of the whole blood divide the heritage of him who leaves no male issue."
each, and the adopted son the remaining one. This is conformable to the law of Manu, the Udvasaka-tattva, Dnya-krama-sangraha, Viyaadarnava-setu, Dnya-tattva, Dattaka-mimansa, Dattaka-chandrika, commentary on the Dnya-bhaga, and other authorities.

**Authorities.—**

Manu says:—“Of the twelve sons of men, whom Manu, sprung from the Self-existent, has named, six are kinsmen and heirs, six not heirs, (except to their own father,) but kinsmen. The son begotten by a man (himself in lawful wedlock,) the son of his wife (begotten in the manner before mentioned,) a son given to him, a son made or adopted, a son of concealed birth or whose real father cannot be known, and a son rejected (by his natural parents,) are the six kinsmen and heirs.” The text of Vrihaspati cited in the Udvasaka-tattva: “Manu holds the first rank among legislators, because he has expressed in the code the whole sense of the Veda: no code is approved which contradicts the sense of any law promulgated by Manu.”

The following is the doctrine laid down in the Dnya-krama-sangraha. “In the partition made between legitimate and adopted sons, legitimate son has two shares, and the adopted sons, who are of the same class with the father, take one share.”

The Viyaadarnava-setu contains the same reading as above. The author of the Dnya-tattva concurs in the preceding observations, saying: “Among these (the twelve sons of men,) except the son of the body, he who is of an equal class with his adoptive father shall receive one-third of the father’s estate, where a son of the body is living.”

“A given son abounding in good qualities (jathé-jéta) existing: should a legitimate son be born at any time, let both be equal sharers of the father’s whole estate.” That must be construed, as supposing the former possessed of good qualities, and the legitimate son destitute of the same: on account of the epithet “jathé-jéta (abounding in good qualities.) He in whom there is ‘jéta,’ that is, an assemblage (samhá) of good qualities. This is the meaning. This is laid down in the Dattaka-mimansa.

“Of the man to whom a son has been given, adorned with every quality, that son shall take the heritage, though brought from a
different family." "With every quality,"—"class, science, observance of duties." This is the doctrine contained in the Dattaka-chandriká.

It appears from the commentary on the Dáya-bhága, the Dáya-krama-sangraha, Viśdárraya-setu, and other law books, that only in default of a brother's son, his grandson in the male line is entitled to the succession.

Calcutta Court of Appeal.—Ibid. Case, 5, (pp. 69—72.)

Q. 1. Of five uterine brothers, the eldest, after a general partition, lived together with his second brother, and died childless. In this case, does the property left by the eldest brother devolve only on the son of his associated (second) brother, or on all the sons of his brothers?

R. 1. If of the separated brothers, two lived together, through mutual affection, as re-united in food and family, and one of such associated brothers died, leaving no nearer heirs, as son, and so forth, his property should devolve on his re-united brother only, on whose death, his son is alone entitled to the succession. The sons of the unassociated brothers have no title thereto.

Authorities:

The text of Jágyavalkya, cited in the Dáya-bhága and other works of law: "A re-united (brother) shall keep the share of his re-united (co-heir,) who is deceased; or shall deliver it to a son subsequently born." The term re-union is explained by Vrīhaspâtī: "He who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united."

Q. 2. Should the five brothers, having been separated, have all lived apart, and one of them have died leaving no male issue, in such case, on whom does his property devolve?

A brother inheriting next to a mother.

R. 2. In default of heirs down to the mother, his brothers of the whole blood are equally entitled to the succession. The authorities are laid down in the Dáya-bhága, &c.

Authorities:

Devaka:—"Next let brothers of the whole blood divide the heritage of him who leaves no male issue."
214 VYAVASTHA-DARPANA.

JÁNYAVAŁKYA:—“But an uterine brother shall thus retain or deliver the allotment of his uterine relation.”

MANU:—“Of him who leaves no son, the father shall take the inheritance; or the brothers.”

Zillah Hoogly, December 18th, 1820.—Ibid. Case 6, (pp. 72, 73.)

Q. Of four uterine brothers, who lived together and enjoyed the profits of their paternal and acquired estates as an united family, two died before partition, leaving their widows. Subsequently to their death, the surviving brothers voluntarily selected an arbitrator to divide the estate between the parties. He (the arbitrator) adjudged, that the property should be made into four shares, of which two should be taken by the brothers, and the remaining two by the widows, whose shares were to be intrusted to the management of their husband’s brothers, from whom they were to receive the produce during their lives. The parties consented to this award, and acted upon it for some time. Subsequently, one of the brothers died, leaving a widow and two sons under age. One of the widows, whose husband’s share had been intrusted to her husband’s deceased brother, died, and lastly the surviving brother died, leaving sons. Under these circumstances, which of these survivors is entitled to succeed to the deceased widow’s property, which devolved on her, in virtue of inheritance, from her husband?

On the death of a widow, her property will go to the son of her husband’s brother who survived, to the exclusion of the sons of his brother, who died before her.

R. Under the circumstances above stated, the widow’s share (that is, one-fourth of the property as awarded by the arbitrator) should have devolved on her husband’s brother, who survived her, and on his death it should go to his sons. The other survivors are excluded from the inheritance.

Authorities.—JÁNYAVAŁKYA: “The wife, the daughters, also both parents, brothers likewise and their sons, &c.” (See ante, p. 28.)

This doctrine is conformable to the law as expounded in the Dáya-bhága, &c.

Calcutta Court of Appeal, May 6th, 1819. Ibid. Case 7, (pp. 73, 74.)

Q. There were three brothers, A, B, and C, who, having made a partition among themselves of their landed and other property,
sons, can have any title to the property of the first brother's widow: as a son's widow has no right of succession to her own father-in-law's property, a fortiori she can have no right of succession to her father-in-law's brother's property. The brother's daughter is not enumerated in the series of heirs of one who leaves no male issue. Although it is maintained in some copies of the *Dāya-krama-sangraha*, that a brother's daughter's son has a right of succession, yet this doctrine is wholly omitted in many copies of that tract,* and there is no rule in the *Dāya-bhāga*, the commentary by Sri-krishṇa Tarkā-lakṣāra, *Dāya-tattva*, or other authority, to the effect that the brother's daughter's son has the right of succession.* In this case, the kinmen in the sixth degree sprung from the paternal stock first succeed, and in default of them, those who are of the seventh or more remote degree succeed, according to the proximity in the order of relationship. The fact of the second brother's son's widow living with her husband's uncle's widow, in respect of joint food and other matters, is not the means of conferring upon her any right of succession, as the *Dāya-bhāga* and other authorities current in Bengal contain no special rule to that effect, dependant on the division or non-division of the property. This opinion is conformable to the *Dāya-bhāga*, *Dāya-krama-sangraha*, *Dāya-tattva*, and other authorities current in Bengal.

"Where there are many relatives (gnātayah,) or remote kindred (akuliyah,) or cognate kindred (vāndsāvaha,) he who is nearest of kin shall take the wealth of him who dies without male issue."—Vrihaspati cited in the *Dāya-tattwa* and *Dāya-krama-sangraha*.

Zillah Mymensing, March 5th, 1819.—Ibid, Case 11, pp. 76—78.

Q. There were four brothers, namely, Devaki-nandan, Dharaṇi-dhāra, Rām-kānta, and Kāl-prasād. Devaki-nandan died in the month of Bysack 1222 B. S., leaving two sons. In the year 1197 B. S. Dharaṇi-dhāra died childless, and his widow Sura-dhvati also died in the month of Magh 1218 B. S. Rām-kānta died in the year 1216 B. S., and his widow Joy-maqi and two sons are still living; and Kāl-prasād died childless in the year 1201 B. S., leaving a widow, who is still living. The brothers were possessed of some landed property in equal portious, and according to the award given

* But she the remarks on the succession of a brother's daughter's son.
Q. A person had three sons, A, B, and C, who divided their paternal estate and took possession of their respective shares. A, the eldest, died, leaving three sons, one of whom died, leaving no heir. The second son, B, died, leaving a widow and a daughter; and the younger son, C, died, leaving a daughter and her two sons. B’s widow, who succeeded him in possession of his share of the property, left at her death a daughter, who also died subsequently leaving a daughter. In this case, will the property left by B, devolve on his daughter’s daughter, or on his brother’s sons?

R. Under the circumstances above stated, on the death of the second son, B, his property which he inherited from his father should have devolved on his widow, then on his daughter on whose demise her father’s brother’s sons are entitled to the succession. Here the daughter’s daughter is excluded from inheritance. This opinion is conformable to the Dáya-bhága and other works of law.

Zillah 24 Pergunabs, September 1806.—Ibid. Case 10, page 76.

Q. Of two Hindu landed proprietors, who were uterine brothers, one died childless, leaving a widow. The second brother, his son and son’s son, died before the widow; but the second brother’s son’s widow, his own daughter, and daughter’s two sons, are living. In this case, on the death of the first brother’s widow, will her property devolve on the second brother’s son’s widow, or on his daughter or daughter’s sons, or on the kinsmen sprung from the same paternal stock in the sixth degree of her husband? What is the law, supposing the first brother’s widow to have lived with the second brother’s son’s widow jointly in respect of food and other matters, and supposing the kinsmen sprung from the same paternal stock to have been beyond the seventh degree in point of relationship?

R. Of the two uterine brothers, supposing one to have died leaving a widow, his property should have devolved on the widow. When the second brother died without a son or son’s son, leaving a son’s widow his own daughter and daughter’s two sons him surviving; then, on the death of his first brother’s widow, neither the second brother’s son’s widow, nor his daughter, nor his daughter’s

* But see the remarks in the succession of the brother’s daughter’s son and the rest.
sons, can have any title to the property of the first brother’s widow: as a son’s widow has no right of succession to her own father-in-law’s property, a fortiori she can have no right of succession to her father-in-law’s brother’s property. The brother’s daughter is not enumerated in the series of heirs of one who leaves no male issue. Although it is maintained in some copies of the Dāya-krama-sangraha, that a brother’s daughter’s son has a right of succession, yet this doctrine is wholly omitted in many copies of that tract,* and there is no rule in the Dāya-bhāga, the commentary by Śrī-kriśṇa Turkā-lunkāra, Dāya-tattva, or other authority, to the effect that the brother’s daughter’s son has the right of succession.* In this case, the kinsmen in the sixth degree sprung from the paternal stock first succeed, and in default of them, those who are of the seventh or more remote degree succeed, according to the proximity in the order of relationship. The fact of the second brother’s son’s widow living with her husband’s uncle’s widow, in respect of joint food and other matters, is not the means of conferring upon her any right of succession, as the Dāya-bhāga and other authorities current in Bengal contain no special rule to that effect, dependant on the division or non-division of the property. This opinion is conformable to the Dāya-bhāga, Dāya-krama-sangraha, Dāya-tattva, and other authorities current in Bengal.

“Where there are many relatives (gnātayah,) or remote kindred (sakulyah,) or cognate kindred (vāndhavāk,) he who is nearest of kin shall take the wealth of him who dies without male issue.”—Vṛihas-pati cited in the Dāya-tattva and Dāya-krama-sangraha.

Zillah Mymensing, March 5th, 1819.—Ibid, Case 11, pp. 76—78.

Q. There were four brothers, namely, Devaki-nandan, Dharani-dhar, Rām-kānta, and Kāl-prasād. Devaki-nandan died in the month of Bysack 1222 B. S., leaving two sons. In the year 1197 B. S. Dharani-dhar died childless, and his widow Sura-dhuni also died in the month of Magh 1218 B. S. Rām-kānta died in the year 1216 B. S., and his widow Joy-maṇi and two sons are still living; and Kāl-prasād died childless in the year 1201 B. S., leaving a widow, who is still living. The brothers were possessed of some landed property in equal portion, and according to the award given

* But she the remarks on the succession of a brother’s daughter’s son.

28
by arbitrators, the widows of Dharaṇī-dhāra and Kālī-prasād were in the enjoyment of the produce of their respective husbands' shares of the estate while they were living, and on their death their shares were divided between Devakī-nandana, Rām-kānta, and their heirs. In this case, on the death of Sura-dhuṇī the widow of Dharaṇī-dhāra, was the widow of Kālī-prasād entitled to any portion of the produce which Sura-dhuṇī received?

R. Supposing the widows of Dharaṇī-dhāra and Kālī-prasād to have enjoyed the produce of their respective husband's shares of the estate during their life-time, on the death of one of them, being the widow (Sura-dhuṇī) of Dharaṇī-dhāra, the widow of Kālī-prasād has no right to get any portion of the produce which belonged to Sura-dhuṇī, because the law no where recognizes the brother's widow as one of the heirs of a person who dies leaving no male issue. *


Q. A Brāhmaṇa, having caused partition of the landed estate and effects, which he had held jointly with his uterine brother, lived apart, and died leaving a minor son, an unmarried daughter, a widow, and the sons of his brother above mentioned. His son subsequently died; then his widow. There is a possibility that his daughter will have male issue, and she claims her father's estate. Is this daughter, or are his brother's sons, entitled to the succession?

R. Under the circumstances above stated, the daughter is excluded; as, on the death of the proprietor, his property devolved on his son, on whom she confers no benefit by presenting funeral oblations to his manes. The brother's sons are entitled to the succession, because they present the funeral oblations to two ancestors, which the original proprietor was bound to offer.


* The property which was possessed by Sura-dhuṇī, the widow of Dharaṇī-dhāra, will devolve on the heir of Devakī-nandana alone, by whom the heirs of Rām-kānta and Kālī-prasād are excluded, because the persons from whom they inherited died prior to the death of Dharaṇī-dhāra's widow.—See ante, p. 162.
Q. A Brāhmaṇ was survived by his five sons, two of whom died childless. The fourth brother had a son, who died before his father, leaving a widow and a maiden daughter; the fifth died without issue, and the third brother died leaving four sons, the eldest of whom died childless, and the second and third each left a son. The fourth brother’s son’s daughter, being married, has male issue. In this case, on the death of the fourth brother, who, among the survivors, are entitled to inherit his property?

R. It appears that the son who died before his father left a widow and a maiden daughter, and subsequently the daughter having been married, had a son. But where there is a brother’s son, and a son’s daughter’s son surviving, the brother’s son is entitled to the succession; the deceased son’s daughter’s son has no legal claim to inherit from his maternal great-grandfather. This is the opinion of the authors of the Dāya-bhāga and other works.—March 21st, 1821. Ibid. Case 15. (page 81.)

Who can be called a re-united parcener? To this question Jaimūta-váhana says:—“Father, son, brothers, paternal uncles, and the rest, are, when re-united, reckoned re-united parceners (Dā. bhā. p. 168). With reference to the term “and the rest” Śrī-krishṇa Tarkālānkaṇa has however shewn, or directed re-union among persons as far as the brother’s grandson. (Commentary on the Dāya-bhāga; Sans. pp. 224, 225.) Raghu-nandana affirms, that re-union only takes place between father and son, between brothers, or between paternal uncle and nephew. In effect he considers the term, “and the rest,” in the remark of Jaimūta-váhana, as comprehending only the son and nephew. Jaimūta-váhana again observes, when treating of the shares of re-united parceners, “re-union should not be admitted among others besides those who are expressly mentioned, else the enumeration would be unmeaning.”

How re-union is effected? By Vaiśravaṇa in the following text:—“He, who being once separated, again, through affection, dwells together (a) with his father, brother, or paternal uncle (i), is termed re-united. He

thus shows, that persons, who by birth have common rights in the estate acquired by the father and grandfather, as father (and son,) brothers, uncle (and nephew,) are re-united, when, after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulating that “the property which is thine, is mine, and that which is mine is thine.” The partnership of traders, who are not so circumstanced, and only act in concert on a united capital, is no reunion. Nor are separated co-heirs re-united merely by junction of stock, without an agreement prompted by affection as above stated.*

(a) Their dwelling together is not simply a residence in the same house or abode, (for that may happen even without affection, when the habitations are not equally numerous with the brothers;) but it consists in forming one household; and their intentions are thus declared: “what is thy property is mine”—their effects are thus intermixed: “the duties of us both shall be the same”—an agreement for community of duties is thus made: in like manner common fare. Consequently, two brothers, again living together, through mutual affection, as joint house-keepers, after having made a partition, are called re-united parencers. Such is the meaning, and the text is so interpreted by Raghu-nandana, Jímátá-váhana, Váchaspati Misra, and the rest. †

(i) It appears from the term—“With his father, brother, or paternal uncle,” used in the text of Vrihaspati, that they alone are determinately meant, who were not separate by birth. Of these, the father is first mentioned, as the distributer of the estate, when it is divided in his life-time: the term, taken comprehensively, includes also the paternal grandfather and great-grandfather; the brother is next mentioned, as the distributer of shares among brothers; and lastly, the paternal uncle is named, as the person who distributes an estate shared with a son’s son, whose own father is dead: the term, taken comprehensively, includes the son and grandson of a paternal uncle, the great uncle and others. The wife of a brother and the rest are not meant to be so, because they are subject to the control of their husbands and

so forth. Among those only does re-union take place; not among others.*

The text "a re-united (parceller) shall keep the share of his re-united co-heir," is intended to provide a special rule governed by the circumstance of re-union after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers or uncles, or the like, the re-united parceller shall take the heritage.† Therefore,

Vyavastha: 92. No preference is to be given to the circumstance of re-union after separation in the case where claimants in an unequal degree of affinity occur.

Example. Thus for instance, if one brother and another brother's son were re-united with the deceased owner, then owing to the concurrency of the relation in unequal degree of affinity, the brother alone is the heir, not the nephew. Further, if the whole brother's son were re-united with, and a half brother were separated from, the deceased, then owing to the relations not being in equal degree of affinity, the half brother alone is entitled to inherit; not the whole brother's son, though re-united.

Vyavastha: 93. It has been determined of late that if one brother, out of several, be separated from the rest, it is a virtual separation of all; and although the remaining brothers continue still joint they are supposed to have re-united.

Inasmuch as the separated brother could not have his share unless the shares of the other brothers were determined or apportioned.

† Df. &c. p. 512.

The nouns brothers &c., (in the Sanscrit) being used in the genitive plural form, the word only must be understood in every case, that is to say—If the competition be only between the brothers of the whole blood, or only between those of the half blood, or only between whole brother's sons, or half brother's sons, or only between the paternal uncles, or the like, then he of them shall alone take the heritage, who was re-united with the late owner. Sri-Krisna's commentary on Daśa-dhāra, page 230.
Jádab-chander Ghose and others versus Binod-behári Ghose.

Case bearing on the vyavasthá No. 92.

Mr. Justice Wells:—This case was heard and disposed of by me on the 1st of April in the present year, and my judgment, when given, was in favor of the defendant. I granted a Review, and the case came on again for hearing on the 21st of July.

This is a suit for a partition of a certain portion of a house and land at Shankar Ghose’s lane, in Calcutta. It appears that one Shiba-prasad Ghose, late of Shankar Ghose’s lane, died many years ago, leaving four sons—Pran-krishna, Mahesh-chander, Chander-kanta, and Ráj-krishna. Seven years after the death of Shiba-prasad, Práṣ-krishna separated himself from his three brothers, and a partition of the ancestral property consisting of land, houses, and movable property, took place. The house and land, the subject matter of this suit, was formerly the joint family dwelling house of the four brothers. Chander-kanta died six years after partition, leaving one son, the present defendant, and a widow. Three years after the death of Chander-kanta, Práṣ-krishna died, leaving three sons, the present plaintiffs. In the year 1853 Ráj-krishna died, leaving only a widow, Mahesh-chander died intestate in 1857, without issue.

Práṣ-krishna lived with his family, entirely separate in food and worship from his three brothers, who lived together up to the time of their death as an undivided family.

The defendant, as the son of one of the three brothers, who lived joint in food and worship, claims to be the sole representative of his father, Chander-kanta, and of his uncles, Mahesh-chander and Ráj-krishna; and the plaintiffs, as the sons of Práṣ-krishna, claim to participate in the uncle Mahesh-chander’s share of the estate.

The following issue was settled—“Whether the partition in 1853 was a partition between all the four brothers, or a partition in respect of Práṣ-krishna alone.”

On behalf of the plaintiffs the chief point made by Mr. Bell was, that under the circumstances of this case, according to Hindu Law in Bengal, the plaintiffs were entitled to some share in the property left by Mahesh-chander. I will now consider the authorities bearing
upon the subject. At page 26, Vol. I, Sir W. Macnaghten’s *Hindu Law*, the general Law is thus stated:—In default of father and mother, the brothers inherit;—first, the uterine associated brothers; next, the unassociated brothers of the whole blood; thirdly, the associated brothers of the half blood; and fourthly, the unassociated brothers of the half blood.” At page 195 (First Edition) of *Shómáchara Sircar’s valuable Digest of the Hindu Law*, it is clearly and distinctly stated that among the whole brothers’ sons, re-united and not re-united, the succession devolves on the re-united one. Several authorities are cited as illustrative. The same work contains the following legal opinion, examined and approved of by Sir W. Macnaghten bearing on this principle.—“The brothers having separated if one of them die without heirs, his estate shall be equally shared by his brothers, provided there be no particular evidence of a re-union having taken place between the deceased and the brother with whom he resided till his death.”—*See Vyavasthá Darpaṇa*, p. 303 (First Edition.)

The authorities for the Doctrine are laid down in the *Dáya-bhága*. If there be evidence of an express and distinct re-union, and one of the re-united brothers die, the associated brother alone is entitled to the succession, to the entire exclusion of the unassociated brother.—See Macnaghten’s *Hindu Law*, Vol. II, pp. 173, 174. How re-union is effected is shewn by *Vrīháspati*. *See Vyavasthá Darpaṇa*, (First Edition) p. 207. And it would seem that according to *Hindu Law*, if only one brother out of four separated entirely, it is a virtual separation of all; and although the remaining three brothers continue still joint, they are supposed to have re-united.

I have had an opportunity of consulting my learned colleague Mr. Justice Shambhu-náth Pañdit on the general question of *Hindu Law* involved in the consideration of the present case, and the learned judge is of opinion that the defendant is entitled exclusively to succeed to the estate of his uncle.

I have come to the conclusion that the plaintiffs are not entitled to any portion of *Mahesh-chander’s* Share, and affirm the decree made at the original hearing.—*H. C. O. Hyde’s Reports*, Vol. I, pp. 214—217.
VYAVASTHA-DARPANA.

But the brother's great-grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle; because he is fifth in descent, and (therefore) not a giver of oblations. Thus Manu says: "To three must libations of water be made, to three must oblations of food be presented: the fourth in descent is the giver of those offerings: but the fifth has no concern with them." Hence,—

**Vyavastha.**

94. On failure of the brother's grandson, the succession devolves on the father's daughter's son.†

For he presents three oblation-cakes to the late owner's father and the rest.

**Reason.**

On failure of heirs of the father down to the great-grandson, it must be understood, that the succession devolves on the father's daughter's son (in preference to the uncle);† in like manner as it descends to the owner's daughter's son (in preference to the brother.) The succession of the grand-father's lineal descendants, including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text, "for even the son of a daughter delivers him in the next world, like the son of a son," is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake. Accordingly Manu has not separately propounded their right of inheritance: for they are comprehended under the two passages, "to three must libations of water be made, &c."; and "to the nearest kinsman (sapișḍa) the inheritance next belongs."‡

Although the succession ought previously to devolve on the sister, as it goes to the daughter before the daughter's son, nevertheless she is excluded from the succession, because she is no giver of oblations at

---

* Dā. bhā. Ch., XI. Sect. 6, pp. 214 & 225. The fifth and the rest do however succeed as sakhyāna, on failure of the givers of the oblation-cake. This will be afterwards adverted to.


the periodical obsequies: being disqualified by sex. But the daughter’s right of inheritance before the daughter’s son takes effect under the special provision of the text. “As a son so does the daughter of a man proceed from his several limbs”, &c. (See ante, p. 165.)* Boudháyna, after premising “a woman is entitled,” proceeds:—“not to the heritage; for females, and persons deficient, in an organ of sense or member, are deemed incompetent to inherit.” The construction of this passage is, a woman is not entitled to the heritage. But the succession of the widow and certain others (viz. the daughter, the mother, and the paternal grandmother) takes effect under express texts, without any contradiction to this maxim.†

95. The son of the proprietor’s own sister, and the son of his half sister have an equal right of inheritance.*

Authority. In the succession of brother’s sons a distinction between the whole and half blood must be understood, not in the case of daughter’s sons. But lawyers consider it as the opinion of Jnáta-váhana, that, in the succession of the sons of the father’s daughters and so forth, a distinction is taken between uterine and half sisters. Herein Sri-krishña Tarkálinkára does not acquiesce, because no law is found expressly declaring the participation of a maternal grandmother in the oblation-cake offered to the maternal grandfather.—Coleb. Dig. Vol. III. p. 528.

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. A Brahmin died leaving two sons, a daughter, and a daughter’s son. Subsequently his eldest son died without male issue, and then the younger, leaving a widow and a daughter, who are since deceased; but the latter at her death left an unmarried daughter and her own husband, who is the defendant in this case. Now the original proprietor’s grandson by the female side claims the property which devolved on the younger brother’s daughter. In this case, will the

---

* Sri-krishña’s commentary on the Dáśa-bhaṣa, Sans. p. 223.
property in question devolve on the original proprietor’s daughter’s son, or on the husband of the younger brother’s daughter?

R. Under the circumstances stated, the property which the younger son’s daughter inherited from her father will go to the original proprietor’s daughter’s son, to the entire exclusion of her husband and daughter, because the grandson confers more benefit on the deceased. Any property which is her own peculium, her own heirs will take. This is consonant to the Dāya-bhāga.

Zillah Hooghly, February 28th, 1817. Macn. II. L. Vol. II. Ch. I, Sect. 3, Case 14 (pp. 56—57.)

Q. A person died, leaving a son and three daughters him surviving. Subsequently to his death, his son departed this life before his three sisters. Of the three sisters one died, leaving a son who is alive; and of the surviving, one is mother of two sons, who are living, and the other is a childless widow. Under these circumstances, how will the property left by the original proprietor be distributed among the survivors? Is any one of the survivors authorised to give or sell a portion of the property, such portion not exceeding his or her share?

R. On the death of the father, his entire estate should have devolved on his son only, by whom his daughters are excluded. If the son died, leaving no heir down to the brother’s son’s son, his father’s daughters’ sons are equally entitled to inherit from him. The sisters have no right to succeed their brother. Each of the father’s daughters’ sons is authorised to make a gift or sale of his own share of the property. The sisters under no circumstances are competent to make any alienation of the property. This opinion is confirmable to the Dāya-bhāga, Dāya-tattwa, Manu, and other legal authorities.

Authorities:—

Goutama:—”Let ownership of wealth be taken by birth, as the venerable teachers direct.”

“The right of a son to the father’s property accrues on the extinction of the father’s property; and by his own birth; and by such ownership
the son is competent to take his father's estate." This is the doctrine of the Déya-tattva.

The following is the doctrine laid down in the Déya-bhága:—
"On, failure of heirs of the father down to the great-grandson, it must be understood that the succession devolves on the father's daughter's son."

Manu says:—"For even the son of a daughter delivers him in the next world, like the son of a son; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake."

Boudhátana, after premising, "a woman is entitled," proceeds—"not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit."

The construction of this passage is, 'a woman is not entitled to the heritage.' But the succession of the widow and certain others, (viz. the daughter, the mother, and the paternal grandmother) takes effect under express texts, without any contradiction to this maxim.*

Zillah Nuddea.—Ibid. Case 1, (pp. 82, 83.)

Q. A minor who had succeeded to some ancestral landed property, died leaving a step-mother, an unmarried uterine sister, and three paternal uncles. Subsequently to his death, his sister was disposed of in marriage, and had a son born in lawful wedlock. In this case, according to the law current in this country, on which of the persons abovementioned does the property left by the deceased minor devolve?

* It was not distinctly stated in this case, whether there was any possibility that the sister, who was the mother of two sons, might bear other sons, or whether she was past child-bearing or widowed. If the father's daughter's sons make partition of their maternal uncle's estate while one of them is capable of bearing more children, and subsequently to the partition a son be born, he should have an equal share of the inheritance, for the succession of a son after partition is in this case provided for. Jánataváleya declares: "When the sons have been separated, one afterwards born of a woman equal in class, shares in the distribution. His allotment must positively be made out of the visible estate, corrected for income and expenditure." This remark is inaccurate, as will appear from a subsequent observation.
A sister's son excludes a step-mother and paternal uncles.

R. Under the circumstances above stated, the sister's son is exclusively entitled to succeed to his uncle's estate, he being the grandson of his (the minor's) father. The step-mother must be provided by him with food and raiment out of the estate. The paternal uncles were not entitled to succeed, because there was a probability of the sister's bearing a son.

Authorities cited in the Dāya-bhāga:—"On failure of heirs of the father down to the great grandson, it must be understood that the succession devolves on the father's daughter's son, in like manner as it descends to the owner's daughter's son; for even the son of a daughter delivers him in the next world like the son of a son."

The text of Manu, laid down in the same authority:—"They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured."

The text of Vaiśāspatī, cited in the Vyavahāra-tattwa and other authorities: "The property of a house, arable land, a market, or other immovables which are possessed by a friend, or a near kinsman in the male or female line, who is not the proprietor, shall not be lost to the rightful owner."

Dacca Court of Appeal, May 31st.—Ibid. Case 2, (pp. 84, 85.)

Q. I. Of two brothers the eldest had a son (since dead,) whose son A is living. The second brother had a son, B, and three daughters, C, D, and E. B died unmarried. Of the daughters, C and D died, the former leaving no male issue, and the latter leaving a son, F. The last named daughter, E, is living, and has a son, G. The above individuals lived separately as a divided family, and B died possessed of his father's property. In this case which of these three individuals, (that is to say A, E, and F,) is entitled to succeed to the estate left by B?

Sisters have no right of inheritance, but their sons exclude the paternal uncle's son's son.

R. 1. It appears that B died, leaving no heir down to a daughter's son; consequently his father's two grandsons in the female line, that is, F and G, are entitled to share equally the property left by him, because they confer benefits on his father by offering the funeral cake to his manes. Here the father's daughter's sons are living,
and succeed in default of his own daughter's son. The nearest kinsman who sprung from the same line, that is, A, the uncle's grandson, has no right of succession. E (the sister of B) has no title to inherit her brother's estate.

Q. 2. Supposing it to have been an invariable rule in the family, that the nearest kinsman of the same stock should inherit, though there be a daughter and daughter's sons living, and a mother of such family die, leaving no son; according to law, will his property in such case devolve on the kinsman, or on the daughter and daughter's sons?

R. 2. Should it be proved that the usage stated in the question has been invariable and immemorial in the family of the parties, in this case B's property will devolve on his kinsman (A,) to the exclusion of the heirs.

Zillah Junglemehauls, June 16th, 1823.—Ibid. Case 3, (pp. 85, 86.)

Q. Two brothers of the whole blood having divided their paternal estate, consisting of lands, houses, and other real and personal property, lived apart, in the enjoyment of their respective shares. The eldest brother was succeeded by his only son, who died without issue, leaving a sister of the half blood, her sons, a son of his uterine sister, and a grandson of his uncle. In this case, which of the survivors is entitled to inherit?

R. On the death of the eldest brother's son, in default of heirs down to the brother's grandson, all of his father's daughter's sons* are equally entitled to the succession, because they severally confer benefits on him by presenting oblations of food to the manes of his three ancestors, including his father, and there is no difference between the sons of sisters of the whole and of the half blood.

Zillah Junglemehauls, August 2nd, 1826.—Ibid. Case 4, (pp. 86,87.)

* The sons of the proprietor's own sister, and the sons of his half sister, have an equal right of inheritance.—See Note, to the Dāya-bhāya. p. 220
Q. A person dies, leaving his paternal uncle’s son’s son and a son of an uterine sister: in this case, are both the survivors entitled to the succession? if not, which of them has the superior title?

R. Under the circumstances above stated, the sister’s son is exclusively entitled to the inheritance.

Authority:—“In default of heirs down to the father’s great-grandson, the father’s daughter’s son succeeds; for he presents the funeral cakes to the manes of the three ancestors of the deceased proprietor, of which his father partakes.”—Ibid. Case 5, (p. 87.)

Q. A man died leaving two sons, a daughter and her son. Subsequently to his death his eldest son died without male issue, leaving the above named individuals him surviving, and then the younger died, leaving a widow and a daughter. Lastly, the widow and the daughter of the younger son died, the latter leaving her husband and an unmarried daughter. In this case, which of the survivors is entitled to the landed estate left by the father?

R. On the death of the younger son, his widow was entitled to his entire property; and on her demise, her daughter derived from her a title to the inheritance. The daughter’s husband and daughter are however excluded, because they confer no benefit on the deceased proprietor. The father’s daughter’s son is entitled to the inheritance. February 28th, 1817. Joy-náráyaṇ Mookerjea versus Rám-ratan Chattoorjea.—Ibid. Case 6, (page 88.)

Q. A person possessing some landed property dies, leaving a son and four daughters. Subsequently to his death, the son takes possession of the whole of his paternal estate, and dies without male issue, leaving his sisters above named, two of whom died, leaving neither husband nor children; and of the surviving sisters, one had three sons, and the other a son by adoption. Under these circumstances, to what proportion of the estate will each individual survivor be entitled?
R. Under the circumstances above stated, according to law the estate will be made into seven parts, of which the three sons of one sister will take six shares, and the adopted son of the other the remaining one.*

Zillah Hoogly, September 23th, 1812.—Ibid. Case 7, (pp. 88, 89.)

Q. A person dies leaving a widow as his heir; and the widow dies, leaving her husband’s paternal grandfather’s brother’s grandson and great-grandson in the male line, and also her husband’s sister’s son. In this case, which of these three surviving individuals is entitled to succeed to her husband’s estate?

R. The sister’s son is, by law, entitled to the inheritance. The paternal grandfather’s brother’s grandson and great-grandson have no claim to the succession.

Zillah Burdwan, May 12th, 1823.—Ibid. Case 8, (p. 89.)

Q. A landed proprietor, having filed a suit in a court of justice to obtain possession of his paternal landed estate, died previously to its decision, leaving an uterine sister, her son, the son of another sister and a descendant in the fourth degree of the paternal line. Subsequently to his death, the sister’s son claimed to be his representative, and died while the claim was pending. There are now surviving his sister, her son’s widow, the son of another sister, and the descendant in the fourth degree of the paternal line. Under these circumstances, which of the surviving individuals is entitled to the succession?

R. Under the circumstances above stated, on the death of the original proprietor, his sole heirs were his two sisters’ sons, by whom his great-grandfather’s descendant, (in other words, the fourth person in descent of the paternal line,) is excluded from the inheritance. It is mentioned in the Dāya-tattwa, that he is entitled to the succession who confers the most benefit in presenting funeral oblations.

* This is questionable. See the section entitled "Whether a dattaka son is entitled to inherit from a benadh" (in the chapter on adoption.)
The person in the fourth degree of descent is indeed a giver of funerary oblations to the proprietor's great-grandfather, but his sisters' sons present oblations to his three ancestors, including his father, (who is principally considered.) Consequently his great-grandfather's descendant cannot inherit, where there are his father's daughter's sons surviving.

The text of Manu cited in the Dáya-bhága:—"To three must libations of water be made; to three must oblations of food be presented, the fourth in descent is the giver of those offerings; but the fifth has no concern with them."

But on failure of heirs of the father down to the great-grandson, it must be understood that the succession devolves on the father's daughter's son. This is the opinion of Jímáta-váhana.

Sri-krishña says:—"The father's daughter's son inherits, though there be the grandfather's uterine brother or the like living."

Consequently, on the death of the proprietor, his father's two daughters' sons should have succeeded to the property which their uncle left; and on the death of one of the sister's sons, his widow is entitled to her husband's share of the estate.

To this effect is the text of Vrihat Manu, cited in the Dáya-bhága.

Zillah Mymensingh, May 18th, 1823. Ibid. Case 9,(pp. 89—91.)

Q. A person died, leaving a widow and a sister's son, who died before the widow, leaving a son. Is the sister's son's son entitled, on the death of the widow, to inherit the property left by her?

R. The sister's son's son, whose father died previously to the widow's decease, has no title to the succession.

Zillah Sylhet, May 8th, 1812. Ibid. Case 10, (p. 91.)

Ráj-náróyan Choudhuri versus Golak-chander Guha.

Case The sons of the paternal uncle and of the sister of a deceased Hindu, whose family, originally from Mithilá, had resided for generations in Bengal, claimed his estate. The Zillah court adjudged, that the estate fell by law to the plaintiff
as deceased's sister's son in preference to his paternal uncle; that Lakkhi-priyé, step-mother of the deceased, was entitled to maintenance. The provincial court of Dacca affirmed this decree in appeal. The Sudder Dewanny Adawlut, under the opinion of their pandits to the effect that "if the family, coming from Mithilâ and dwelling in Bengal, performed religious rites with the people of Bengal, and held a Zemindary in that province, then Golak-chander, the deceased's sister's son, is entitled to it conformably to the Bengal law. But if the family merely dwelt in Bengal, but performed religious ceremonies with the Mithilâ-people, and observed the laws and usages of that province, then Râj-chander, the paternal uncle, will inherit according to the Mithilâ-law," and on consideration that the contested lands were situated in Bengal—that the family had been long resident in Bengal—intermarried with Bengal women—and there had been no uniform observance of the ordinances of the Mithilâ-shástra confirmed the lower court's decrees.—22nd January, 1801. S. D. A. Rep. Vol. I. p. 43.

Shambhu-chander Roy and others versus Gangâ-charan Sênu.

II. A Hindu died possessed of ancestral property—leaving a sister, her minor son, and two paternal uncles. Held according to the vyavasthâ given by the Sudder pandit, that the sister's son (father's daughter's son) succeeds to the exclusion of paternal uncles. 21th July 1838, S. D. A. Rep. Vol. VI. pp. 234—236.

The pandit further declared in his vyavasthâ that, supposing that Sri-maiti the sister had no son, she would be entitled to hold possession as long as there was hope of her bearing one.*

The widow of a sister's son (on whom the estate had devolved) takes the estate to the exclusion of the sister herself.—Rám-goséín versus Rám-râni Debi.—S. D. A. R. Vol. IV. p. 47.

The existence or conception of the father's daughter's son and the rest at the time of the owner's death constitutes their title: this is laid down by Jímúla-váhana, Sri-krishna,† and the other authors respected in Bengal. Hence—

* This part of the Vyavasthâ is wrong. See the Sudder Court's remarks upon it cited at page 239. See also the subsequent remarks and observations.
† See ante, pp. 23;—Elb. In. page 40, Sect. 84.
96. Only those of the father’s daughter’s sons and other relations (enumerated in the order of succession,) who survive the owner or his female heir in succession, or remain in utero at the time of his or her death.* (as the case may be,) are entitled to inherit.

Not those who are subsequently conceived, their heritable right not being acknowledged by Jimāta-vāhana and the other authorities of the Bengal school.

Ram-manį Choudhurāṇi versus Hem-latā Choudhurāṇi.

Case bearing on the vyavasthā No. 96.

I. Ram-manį sued as the heir of her father and brothers to inherit the estate left by them. Her claim was dismissed, because she had not a son alive at the time of the death of her mother who survived the brothers; (and because her last surviving brother had, previous to his death, executed a deed of gift in favour of the male heir.)—6th January, 1835. S. D. A. Rep. Vol. VI. p. 3.

Lakkhi-priyā versus Bhoirab-chander Choudhuri and Joy-chander Choudhuri.

Case bearing on the vyavasthā No. 96.

II. Kirti-chander, who inherited his father’s property, dying an unmarried minor, was succeeded by his mother Joy-durgā, who subsequently died, leaving Lakkhi-priyā her husband’s wife, Purnima her step-daughter, and Bhoirab-chander the son of the paternal uncle of Kirti-chander. Lakkhi-priyā instituted the present suit to establish her right in the property of Kirti-chander. Pendente lite, Purnima bore a son, named Braja-nāth Chattoorjea, and she, on the part of herself, and her minor son Braja-nāth, who died after a time, intervened for the assertion of their right to the property in dispute. Bhoirab-chander, among other things, pleaded in his answer that the collector of Rungpore, with the sanction of the Zillah Judge, caused his name to be recorded in the place of that of Joy-durgā, who succeeded her son, having asserted, by reference to the pāṇḍit of the court, that he (Bhoirab) was the legal rightful reversionary (1.)

* See case, pp. 2,3;—Elb. In. p. 40, Sect. 84.

(1) Bāhu-rām pāṇḍit of the civil court of Rungpore, in his answer declared the right of Bhoirab-chander, as son of Kirti-chander’s uncle. The pāṇḍit added, that no text of law...
The case having come on before Mr. P. E. Patton, a judge of the provincial court of Moorshedabad, on the part of the plaintiff was exhibited copy of vyavasthā of Rāj-chander Tarkālankār, pāṇḍit of the Dacca provincial court, and the rūbahārī of the Sudder Dewanny Adawlut dated 27th March 1818, containing the exposition of the law by its pāṇḍits in regard to the case of Rājeshwari Debī versus Prabhā-krishṇa Bishwās. Mr. Patton remarked, that the case was not relevant, and that the opinion of the Zillah court pāṇḍit confirmed that of the pāṇḍit of the provincial court. Consequently, he dismissed the suit with costs, and overruled the intervention of Pūrṇimā, the pretensions advanced by her appearing untenable. This judgment was preceded by a reference to Kṛṣṇa-nāth Nāya-panchānan, pāṇḍit of the court, to ascertain the law. The answer of the pāṇḍit was to this effect. "Neither his (Kirti-chander's) step-mother (plaintiff) nor half sister (Pūrṇimā) has any right to the estate which devolved, on the death of Kirti-chander, on his mother Joy-durgā. Pūrṇimā has borne a son since the death of Joy-durgā. There is, indeed, in the Dāya-bhāga a text declaratory of the heritable right of those born subsequently. But the scholiasts explain this as regarding the estate of the paternal grandfather. As there is no authority for the succession of a father's daughter's son, born under the circumstances in question, Bhoirāb the son of Kṛṣṇa-chander's half brother is entitled (2)."

From this decision, Lakkhi-priyā and her daughter Pūrṇimā appealed to the Sudder Dewanny Adawlut. Mr. Walpole, a judge of the Sudder Court, adverted to the appeal of Karṇā-moyā versus Joy-chander Ghose (3,) and the application of special appeal of Kamalā-kánta Roy and others (4,) and in particular to the vyavasthās of the pāṇḍits of the Court

proounded the right of a sister, and the step-mother was not meant by texts which provided for the succession of the mother.

(2) The pāṇḍit refers to a text of Manu cited in the Dāya-bhāga. Jñātā-vāhana says:
"If the hereditary estate were divided when the mother was yet found, there would be a deprivation of subsistence (vṛitti-lopa). These are the words of Manu's text, quoted by him and which Mr. Colebrooke has translated by the words: "dissipation of their hereditary maintenance." (See Coleb. Dāya-bhāga. Ch. I. para. 45.) The scholiast Śrī-kṛṣṇa remarks that "they would be deprived of their share in their paternal grand-father's estate." The pāṇḍit's opinion is therefore correct.

(3) Case No. 15, S. D. A. Rep. Vol. V. pp. 42-46. This has been hereafter cited.

(4) This will be hereafter found.
in those matters. Mr. Walpole also adverted to two rébakáris of the Sudder Court, dated 20th and 28th of November, 1827, and vyavasthá of the pândits regarding the application of Káli-prashád Roy.

Mr. Walpole, deeming a further exposition of the Hindu law current in Bengal necessary, made a reference to the pândit of the Court, and obtained this exposition: "Under the circumstances stated, Béra-náth, the son of the daughter of Krishna-chander, father of Kírti-chander, is competent to perform exequial rites and ceremonies of his maternal grandfather;—not Bhoiráb, son of his half brother. So also will such son of the daughter of Krishna-chander be entitled to succeed to his estate, which passed from him to his son Kírti-chander, and from him to his mother Joy-durgá. His subsequently born brothers will be entitled to share equally with such son of Krishna-chander's daughter. If the paternal uncle's son and father's daughter's son concur, the former has no right. But if on the death of Joy-durgá no son of Kírti-chander's father's daughter may have been born, or conceived, then his father's daughter, as source of the future production of a maternal grandson of his father, will succeed."(5)

This opinion was considered on the 20th February 1833. The wákils of respondent urged, I. That he had succeeded to the disputed estate on the death of his cousin; II. that Béra-náth had died; III. that Púršimá was excluded from inheritance by leprosy both in respect to the estate of her half brother and that of her son; IV. that she was a twice married woman; for after marriage fixed with one man she had married another. Neither her son, the issue of such marriage, nor herself had any heritable right, nor was he competent to perform exequial rites. Mr. Walpole, deemed further reference to the pândit necessary, and obtained this solution: "I. Púršimá, the mother, succeeds to the estate of her son Béra-náth, if he be not survived by male issue of a father. II. Leprosy bars inheritance unless the affected person perform atonement. It is no bar in that case. III. If Púršimá had been affianced to one, and then married to another,

(5) This vyavasthá of the Sudder pândit is wrong, and the authorities, quoted, inapplicable, as will be perceived on perusal of the vyavasthá delivered by the Supreme Court pândits, cited in note No. 7 in the present case, as well as the subsequent remarks and observations, Q. F.
to whom she has borne a son; still (as defined in my former opinion) will her right in regard to the estate left by Kirti-chander arise.”(6)

On the part of the respondent, was exhibited solution by Râm-joy, a pãdít of the Supreme Court, of questions propounded to him. It was to this effect: “The step-mother of Kirti-chander, his half sister, the son of his father’s half brother, concur. The latter, as nearest sapiña, succeeds to his estate, vacated by the death of his cousin’s mother. If a person, after affiancing his daughter to one man, give her to another, she becomes an outcast; and hence also her son. She cannot offer the funeral cake to his maternal uncle and the rest, and therefore has no right to his estate. A leprous woman who has performed no expiation, and the son born of her whilst in that state, are outcasts. Neither can perform funeral rites; and neither can inherit. The expected existence of the right of the son of the father’s daughter does not bar the establishment of the right of another heir,—according to the doctrine of those who construe the text of Manu regarding deprivation of subsistence as referring to the estate of the father and other ascendant in the direct male line.”

Mr. Walpole deemed it necessary to obtain a more explicit opinion from the pãdít of the Court as to the priority of right of the father and mother of Braja-nâth respectively. In the reference made, Përgimá was described as still likely to produce male issue. The answer of the pãdít was to this effect: “Since Përgimá has still the prospect of bearing male issue, the estate would devolve on her, for the brother or brothers of her late son, who may be born: otherwise their rights could not be preserved; and in fact whilst the expectation of the future birth of such brother existed, the extent of Braja-nâth’s interest was itself indefinite.”(6)

The case was again considered by Mr. Walpole on the 13th of June. He directed that the opinion of the pãdits of the Zillah Court

(6) This Vyasaśtha also is inaccuate, as will be known on perusal of the subsequent remarks and observations, and the pãdít’s own Vyasaśtha which is delivered in a similar case No. 15 hereafter cited, and which being a correct exposition of law, exposes the fallacy of this as well as of the previous Vyasaśtha alluded to in Note No. 5.
and of the Calcutta Court of Appeal, taken in the case of Kāli-prasād Roy, should be produced. (7)

Subsequently on the 15th August, the respondent caused to be filed with the papers of the case, the written opinion of Kāli-kānta and Rām-joy, pandits of the Supreme Court, which was to this effect: "On the death of his mother Joy-durgā, Bhoirab-chander, his uncle's son, was entitled to the estate left by the late Kirti-chander; not his step-mother, nor half sister. The sister, even from the probability of her producing male issue has no title." (8)

On the 29th August the case came on for trial. Gour-mohan Chatterjea admitted that his late son Brāja-nāth was born after the death of Joy-durgā, and that he had only a daughter by his wife. Mr. Walpole passed judgment, confirming the decision of the lower

(7) The circumstances of, and, the Vyavastha delivered in, the case in question are as follows:—"Pārbatī-charōy (the son of the brother of Kāli-prasād Roy,) dying a minor, was succeeded by his grandmother Rāj-maṣī Debī. On her death, his sister Shyām-sundari, and his uncles Kāli-prasād Roy and Durgā-sunder Roy, concurred. Should Shyām-sundari produce a son, would such son be entitled to the estate vacated by the death of the grandmother; and if so, until the birth of the sister's son to whom care should the charge of the estate be committed,—that of the sister, or that of the uncles? and if the latter, is caution exigible? On the case thus put, the pandits of the Court, Rāma-tanu Sarmā and Vidyā-nāth Misra, delivered an exposition which was in substance this: 'As next heir, his paternal grandmother succeeded to the estate, which Pārbatī-charōy inherited from his father. The same principle applies on the death of Rāj-maṣī. Any maternal grandsons of the father of Pārbatī, born by Shyām-sundari his sister, will have no right; for there is no law declaratory of the right of the father's daughter's son (a preferable heir to the grandfather, who is prior to the paternal grandmother,) to succeed on her death to the estate which she as heir had obtained. The authorities cited from Śrī-krishya's comment on the Dāya-bhāṣya, from the Digest, and from the Dāya-krama-saṅgraha—shewed that, in the order of succession, the father's daughter's son precedes the grandmother, and is next to the brother's grandson." This is a correct vyavastha, though not a perfect one.

(8) In support of this opinion, which is a correct one, some arguments and authorities were adduced. Two of which are as follows:—"According to Śrī-krishya and the author of the Digest and other scholiasts, existence of the heir at the time of the death of the last owner must be considered as essential. The law does not contemplate the unwoned state of property left by a deceased; for it would then be like an unappropriated treasure. Hence, the right of a successor existing at the time of the death of the last owner and benefiting him, is established: and any legal cause extantive of such right is wanting. These causes are death, degradation, assuming another order, extinction of worldly passion, gift, sale and conquest. The Passage in the Dāya-bhāṣya, suggesting that the survival of a son at the time of his father’s death may constitute his acquisition” (para. 25, Chapter I.)
court with costs. His motives were thus expressed. "I refer,—to the 
Vyavasthā of Rām-tanu Nyāya-bógish and Voidya-nāth Misra, the present 
pandit, given in the case of Kāli-prasād Roy, to the two Vyavasthās of 
the pandits of the Supreme Court, to the Vyavasthās of the pandit of 
the Zillah Court, and to that of the pandit of the Court of Appeal in this 
case. These show, that the right of the father’s daughter’s son is condition-
on his existence, at the time of the death of his maternal uncle,—
or of his mother, if she intervene as an heir. Braja-nāth was born 
after the death of Joy-durgā. He had no right to transmit. Neither 
he nor his mother has any right. Immediately on the death of Joy-
durgā, the respondent Bhoirab was, as an heir of her son, entitled to 
the disputed property."—29th August, 1833. Case No. 105. S. D. A, 

Under the Hindu law received in Bengal, the sister’s son is an heir 
preferrable to the paternal uncle’s son; but right of succession cannot 
remain in abeyance in the expectation of the future production of such 
heir not conceived at the time of succession opened. This was adjudged with 
reference to official opinions of some pandits, and unofficial opinions 
of others, contrary to some official opinions,—that of the pandit of 
the Sudder Dewanny Adawlut included.—(Marginal note to the 
above case.)

The above note is a just exposition of the law on the point.—It 
has since received corroboration from the decisions in the cases of 
Keshab-chander Ghose versus Bishno-prasād Bose,* and Birajá-moyi 
versus Naba-krishna Roy †, and also from the Sudder Court’s remarks 
in the case of Shambhu-chander Roy versus Gangá-charan Sen.‡ Those 
remarks are as follows—

"This case has not been reported so fully as it might have been, 
as an abstract of it to be found in the note to case No. 15, Vol. 
V. p. 45. In deciding the legal question involved in it on its again arising, 
the cases Nos. 15, 20, and 105 of volume V., should be carefully consider-
ed. The majority of authorities and precedents would appear to be in 
favour of the decision now reported, to the extent of the right of succes-
sion to ancestral property of a sister’s son alive at the time of his mater-

* See ante, p. 7. † Hereafter cited as the last case bearing on the Vyavasthā 
No.—95. ‡ See ante, p. 238.
nal uncle's death, to the exclusion of the paternal uncles of the latter. Whether the right of succession of other existing heirs can remain in abeyance in the case of a childless sister, as for future issue, is still doubtful.* In the marginal note to Case No. 106, volume V., it is stated that 'the right of succession cannot remain in abeyance in the expectation of the future production of a sister's son not conceived at the time of succession opened, and that this was adjudged with reference to official opinions of some pandits, and unofficial opinions of others, contrary to some official opinions, that of the pandit of the Sudder Dewanny Adawlut included.' It might be observed that the pandit of the Sudder Dewanny Adawlut, Voidya-náth Misra, had not invariably held the same opinion, as it is apparent from the conflicting opinions pronounced by him which are given in the note to Case No. 15, of volume V., and which can scarcely be said to have been satisfactorily explained in his reply to the Court, when called upon to reconcile them."—S. D. A. Rep. Vol. VI. pp. 236, 237.

Álam-chander Dhar versus Bijoy-gobind Barál and others.

III. Kirti-chander, a zemindar in Zillah Moorsoddab, died leaving two sons Mahánanda and Paramánanda, and three daughters Ánanda-moyí, Sánanda-moyí, and Paramánanda-moyí. He was succeeded in his estate by his two sons. Paramánanda died unmarried, and the entire estate devolved upon Mahánanda. He died leaving a widow, who succeeded to the estate. The widow also died; and at the time of her death there were living Ánanda-moyí, and Sánanda-moyí, her husband's married sisters; five sons of the former, two of the latter, and Paramánanda-moyí her husband's unmarried sister. The husband of Ánanda-moyí subsequently died, Sánanda-moyí had another son named Durgádás Dhar.

* On a further inquiry it would have been found that there is scarcely any writer or commentator of a law-book current in Bengal who does not maintain that the right of the sister's son is conditioned on his existence at the time of the death of his maternal uncle (or of his female heir, if any intervene as having prior title); that of the modern pandits most have followed those authors and authorities; only a few have given vyavasthā's contrary to the above, and consequently contrary to the law as current in this country; and that it is the general maxima of the Hindu law that the right of succession cannot remain in abeyance in expectation of future birth of a preferable heir not conceived at the time of owner's death.—This has been admitted by Voidya-náth Misra himself, who in one of his conflicting Vyavasthās delivered in this and other cases, was, for the purpose of refuting a wrong opinion of another pandit, induced to give the true exposition of the law on the point in question. See his Vyavasthā in the case No. 16—Karma-moyí, versus Joy-chander Ghose—hereafter cited.
The *Pandits* of the Zillah courts of Beerbhoom, Moorshedabad, and Nuddea, being referred to by the Zillah Judge, declared that, under the circumstances stated, the seven nephews of *Mahánanda*, alive at the time of his death, were, on the death of his widow, entitled to the estate of their maternal uncle, and that the son of *Sánanda-moyí* subsequently born was not entitled to share in it. The judge, with reference to these *vyavasthás*, and precedents, passed judgment dismissing, the claim of *Sánanda-moyí*’s sons subsequently born.

The Sudder Court, in appeal, asked their *pandit*:

1st. “Is the son born to *Sánanda-moyí*, after the death of *Mahánanda* and his widow *Drapa-moyí*, entitled to share equally with his brothers and cousins in the estate left by *Mohinanda* and his widow?— and should other sons be born to *Sánanda-moyí*, will they also be entitled to share? 2nd. Are the laws on these points as current in *Urisyá* and Bengal the same, or is there any difference between them? 3rd. Should a decree have been passed, after the death of *Mahánanda* and his widow, recognizing the right of the five sons of *Ánanda-moyí* and the two sons of *Sánanda-moyí*, and should they, in execution of such decree, have been put in possession of their shares, will the decree and subsequent execution in any way affect the claim of the sons of *Sánanda-moyí* subsequently born?”

The *pandit* replied to the first question that, under the circumstances stated, the son born to *Ánanda-moyí*, after the death of *Mahánanda* and his widow, would be entitled to share equally with his brothers and cousins, according to the first authority which he would cite, but that he would not be entitled under other authorities which follow:

*Authorities—*

1. *Manu*—“They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured.”—See *Dá. bhá.* Ch. I. para. 45.

2. Gloss of *Sri-krishṇa Tarkalankára* on the *Dáya-bhága*—“The term ‘dissipation of their hereditary maintenance, or deprivation of subsistence,’ in the above text means that ‘the deprivation of the grandsons of their share in their paternal grandfather’s estate is censured.”
3. Vivāda-bhangārṇava.—"In the text of Manu above cited, the word "Vṛitti" or patrimonial support is used. This refers to ancestral property lineally inherited in the male line."

To the second question the pandit replied, that the works of Shambhukara Bājpeī and Vidyākara Bājpeī were in great reputation in Urisyā, that he had frequently inquired for those works, but had never succeeded in procuring them. He was therefore unable to speak with certainty on this point. He added that the Mitāksharō was also current in Urisyā; and thus there was a difference in the law as current in Urisyā and Bengal, in which latter the Mitāksharō was not current.

Reply to the third question. Under the circumstances stated in the third question, the claim of the son, born subsequently to the decree and execution thereof, would be affected; because, the right of the other seven share-holders having been settled by the ruling power in conformity with the law, the daughter's son of the original proprietor, the father of Mahānanda, born after the death of Mahānanda and his widow, has no claim to share in the estate.

Authorities—

1. Manu.—"Once is the partition of an inheritance made; once is a damsel given in marriage; and once does a man say, 'I give these three are, by good men, done once for all, and irrevocably.'"—Ch. IX. v. 47.

2. Nārada, cited in the Vivāda-bhangārṇava and other works:—"The subjects are under the authority of their ruler, and the ruler is at liberty to give orders to his subjects."

The case having been again brought before Mr. Smith, he called upon the pandit to reconcile his present vyavasthitā with that delivered in the case of Musst. Su-lakhyanō versus Róm-dulśi Pónde and others, (S. D. A. Rep. Vol. I. p. 324,) and to give a further exposition of the law after consulting the works of Shambhu-kara Bājpeī and Vidyākara

* These authorities are inapplicable in the present instance. The first of them applies only where the partition was made justly (sharmatāḥ: See Kullaka Bhātta's comment on the text cited.) But where the property is ill-distributed, it must again be divided, as in the case of a brother born after partition. See Coleb, Dig. Vol. III. pp. 48, 49.
Bējpeī if procurable. To this the pāṇḍit replied that he had not been able to procure the works alluded to, but gave no further exposition of the law of the case.

Before the pāṇḍit’s reply had been heard, Mr. Smith left the court, and the case was then laid before Mr. Rattray, who confirmed the judgment of the lower court.

Before passing any orders as to the admission or rejection of the appellants’ application for review of judgment, Mr. Rattray called upon the pāṇḍit (Vidyā-nāth Misra) to explain the discrepancies between the opinions given in this case and in those of Muset. Su-lakhyānā versus Rām-dulāi Pānde, and Karuṇā-moyī versus Joy-chander Ghose. It was pointed out to him that the opinion given in that case by the pāṇḍit of the Court, was at variance with his written vyavasthā in the present action: and further that his own written and verbal opinions in the present case, as also his written opinion in the present case and in that of Karuṇā-moyī versus Joy-chander Ghose, appeared to him opposed to each other.

The pāṇḍit’s reply to this not being satisfactory, Mr. Rattray then referred the questions put by Mr. F. C. Smith to the pāṇḍit of the Calcutta Court, for the opinion of the pāṇḍit of the Western Court.

On the receipt of the reply of the pāṇḍit of the Western Court, Mr. Rattray recorded his minute, the latter part whereof is as follows: “On the 16th July 1840, a petition for a review of the decision passed, was read by me. The pāṇḍit of this Court was called upon to explain asserted discrepancies; and the pāṇḍit of the Western Court for a vyavasthā on the question at issue. This latter being confirmatory of the opinion delivered by the pāṇḍit here, and of other vyavasthās on the record, and such precedents as I could discover being in favour of the judgment which had been affirmed, I rejected the petition, on the 8th instant; and the claim of Durgā-dās, to share with his brethren, stands disallowed.” At the same time I have met with so much contradiction or doubt, and with so many apparently conflicting opinions on the question generally, that I have thought it advisable to send on the case for another voice.

* This judgment is correct, but the principle upon which it is based is wrong, for if the father’s daughter’s son born afterwards and not conceived at the time of his maternal uncle’s death had any right according to the Hindu law, then a judgment of the Court fixing the shares of several sisters’ sons existing at the time of death of the maternal uncle could not affect his title; e. g. had such judgment been passed in the case of
Mr. Rattray concluded his minute with referring to the cases reported at pages 37 and 324, volume I., and pages 42, 55, and 315, volume V. of the Reports.

The case was then laid before Messrs. Tucker and Reid jointly, who remarked that as Mr. Rattray, the deciding judge, had disallowed the application for a review, no other judge could admit it. On this Mr. Rattray finally disposed of the case, by a rejection of the application. 26th March, 1838. S. D. A. R. Vol. VI., 524.

Remarks.—The right of a sister's son, born after the death of his maternal uncle, to succeed to ancestral property as the father's daughter's son, is a point on which much difference of opinion exists between pandits, as may be seen by a reference to the cases cited in Mr. Rattray's minute, and to that of Shambhu-chander Roy versus Gangâ-charâg Sen, under date the 24th July, 1838. In the case now reported, a judgment of court fixing the shares of the several sisters' sons in existence at the time of the death of the maternal uncle, had intervened prior to the birth of the infant for whom the appellant claimed, and it was this circumstance that, under the exposition of the law as given by the pandits, governed the judgment of the Court. (See however the Note in the preceding page.)

Regnant. Regarding the origin or cause of title of the father's Vyavastha's daughter's son, the opinion of the large majority of the modern pandits is in conformity with the principle laid down by the founder of the Bengal doctrine, Jîmîta-vâhana, and adopted by Srî-krisna and the other compilers and commentators respected as paramount authorities in Bengal. There are, however, exceptions: Skobhâ-râm Sarma, Brindâban-chander Sarma, and Chatur-bhuj Sarma have declared, that the sons, born and unborn, of a whole sister (married within the proper time,) would take her predeceased father's estate, which had vested in her minor brother, who had died before marriage (1.) Two or three pandits have declared, that the paternal property, in which a brother born after partition is declared by the law entitled to take an equal share from his brothers who had previously divided, it would be held void as being erroneous, or not borne out by the law. The above judgment therefore ought to have been founded on the general principle of the Hindu law, viz. that the father's daughter's son, born after the death of the maternal uncle, has no title to the deceased's property, whether it was or was not previously divided by those nephews who existed at the time of the death of the deceased (or his female heir if any intervenes.)

estate of a deceased proprietor legally devolves, after the death of his female heir (if any intervene,) on his father's daughter's sons who were then alive, and to the other sons of the sister, who are since born, in equal portions; and that should one or more sons be hereafter born of the sister, he or they also would be entitled to share with the other sons of the sister, who are now living (2.) And Vidyā-nāth Misra has given his opinion as follows:—"The father's daughter's son, born after the death of the late proprietor, would be entitled to share equally with his brothers and cousins, according to this text of Manu cited in the Dāya-bhāga.—'They who are born, they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured.'—But that he would not be entitled under other authorities, viz. gloss of Śrī-krishṇa Tarkālacāra on the Dāya-bhāga:—'The term dissipation of their hereditary maintenance, or deprivation of subsistence in the above text means that the deprivation of grandsons in their share in the paternal grandfather's estate is censured.'—And Vivāda-bhāngāryava:—'In the text of Manu above cited, the word 'Vṛitti' or partimonial support is used. This refers to ancestral property lineally inherited in the male line" (3.) "The sister is the source of production of daughter's sons to the father, and the medium of their relation. If, at the death of the proprietor, no son of his sister existed, still (since the right of the father's daughter's son could not be otherwise established,) she was entitled to enter on the succession, and hold until production of her male issue. This too was analogous to the succession of the daughter to the estate of the father, who died leaving no male issue or his widow (4.) If the sister's son die, and the sister may still have the prospect of bearing male issue, the estate would devolve on her for the brother or brothers of her late son who may be born; otherwise the right could not be preserved (5.) Supposing that the sister (of the late proprietor) had no son, she would still be entitled to hold possession as long as there was a hope of her bearing one (6.)

If, on the death of the proprietor, no son of his father's daughter may have been born, or conceived, then his sister, as source of the future production of a maternal grandson to his father, will succeed (7.)

REPUIGNANT VYAVASTHĀS REFERRED. Such opinions have neither been declared nor sanctioned by any of the authorities respected and followed in Bengal: more especially they are repugnant to the doctrine laid down by Jīmāta-vāhana and Śrī-krishṇa, the greatest authorities in Bengal, viz. “The existence (of the son) at the time of the father’s death alone constitutes the son’s title.”* "The meaning is, that existence of the son is the sole cause of heritable right, to which the time of the father’s death is an aid."† Opinions like the above must therefore be held as repugnant to the principles of the Bengal code. If the sister’s son, neither born nor conceived at the time of his maternal uncle’s death, be held entitled to inherit to the exclusion of the heir who was then in esse, or to share with his brothers and cousins then living, i.e. when the maternal uncle died, it will be in violation of the above quoted axioms as well as of another equally stringent, that “right does not remain in abeyance.” In the first case, the property of an owner will not be inherited by the acknowledged heir existing at the time of his death (natural or civil,) but must be reserved for an indefinite period in expectation of the future birth of a preferable heir, not yet conceived: thus the entire order of succession becomes intercepted and broken.

The pandit last alluded to has declared, that a father’s daughter’s son, born after the death of the late proprietor, would be entitled to share equally with his brothers and cousins who were in esse when the uncle died, according to the text of Manu which he cited; but that he would not be entitled under Śrī-krishṇa’s commentary on the Dāya-bhāga, and under Viśāda-bhangārṇava, in both of which the above text of Manu is declared to refer to ancestral property lineally inherited in the male line. It is, however, to be borne in mind that the same exposition of


* Jīmāta-vāhana, who further observes: “Here the expressions ‘father’ and ‘son’ severally indicate any relation.”—Dāya-bhāga. That is to say, the expression father is meant to signify the predecessor or former owner, and son is meant to indicate any relative included in the order of succession as entitled to inherit—See ante, p. 5. Note.

† Śrī-krishṇa’s commentary on the Dāya-bhāga, Sans. p. 21. See ante, p. 3.
the said text of Manu is given either expressly or impliedly by all the authorities of the Bengal school, and that (barring the exception and innovation of which we are now treating) it has been universally admitted by the modern pandits that the text in question does not apply to any property other than that of ancestors in the male line. Even our dissentient pandit has found himself unable to be consistent in his departure from the received doctrine. He had in a prior vyavastha, given on review of judgment in the case of Karuná-moyí versus Joychander Ghose, thus expressed himself:—"As for the second proof (i.e. text of Manu above cited,) that regarded the case of paternal partition, and prohibited the father from dividing a lineally descended property (Kramágata) amongst his sons, while the mother was yet fecund, lest the patrimonial support (Vritti) of the after born should fail. Now the estate of the maternal uncle was not considered as such, in respect of the sister's son, on the contrary the succession of the latter was casual, and by its deviation from the sister's son, the condemned act of deprivation of subsistence did not arise." It is therefore to be held as law under the above text that the sister's son, born after his maternal uncle's death, is not entitled to inherit.

If the sister be held entitled to enter on the succession and hold until her son be born (although not conceived at the time of her brother's death,) because the right of the father's daughter's son could not otherwise be established; why is not the father's sister, or any other female, who may be the probable mother of the offspring which, if born, would have had a prior title to inherit, held entitled to enter on the succession in order to preserve the right of her future but uncertain male issue? But no law-giver has provided for the custody and charge of the estate on the unborn during an indefinite period: inasmuch as the succession could not remain in abeyance, but must immediately pass to the surviving heir then in esse. The succession of the sister is by no means analogous to the succession of the daughter, inasmuch as the latter is one of the designated heirs, and inherits before her son in her own right, which does not cease on the birth of her own or sister's son, but lasts to the end of her life: after her death, the property, if he survive, devolves upon him, whereas the former cannot succeed before her son, for as sister she has no title whatever to succeed to her brother's estate. The authorities cited in support of the above Vyavastha (No. 4) are appli-
cable to an entirely different subject. One of them requires to be here noticed, viz. the text of Jánayavalkya cited in the Dáya-
bhága, in the chapter which treats of the participation of sons born after partition. "This" the pandit says, "provides for their shares from the apparent estate." The error of this Vyavastha will be manifest on perusal of the very chapter of the Dáya-bhága where the text is shown to apply to the estate of ancestors in the male line, and not to any other. Such is also the opinion of Srá-krishna and other scholiasts.

The Pandit has declared: "If the sister's son die, and the sister may still have the prospect of bearing male issue, the estate, would devolve on her for the brother or brothers that may be born, otherwise the right could not be preserved." But this is inconsistent either way. I. If the sister's son have died after the succession has devolved upon him, and left neither issue, nor widow, nor father, then shall the said sister succeed, not, however, as sister of her deceased son's maternal uncle, and in order to preserve the estate for another son who may possibly be born to her, but as mother and designated heir of her late son, be she capable of bearing male issue or not; and the succession having once devolved upon her cannot be divested and transferred to her son who may be afterwards born, it being the general and inflexible rule, that succession once vested is indefeasible until the natural or civil death of the taker. So in this case, the future brother of the late sister's son could not take the property from his mother during her life, inasmuch as she held it in her own right, as heir, and not as a mere custodian or trustee for him. After her death of course the property, if he survive, would devolve upon him. II. If the sister's son had died without being the heir and successor of his maternal uncle, the sister could not claim as mother to her son, because the succession did not devolve on him; nor could she succeed as sister of her late brother, for the sister is no heir; * nor as a bandhu for her sons who may possibly be born, for the reasons which we have already urged.

* In the case of Raji-kumari Kripad-moyi Deb versus Raji Dhamodar-chander Deb and others it has been determined by the Sudder Court that, according to the Hindu law, property derived by a mother from her son cannot be succeeded to by her daughter, the sister never being heir to the brother.—20th February, 1845. S. D. A. R. Vol. VII. p. 192, Vide Elb. In. pp 67, 68;—Cons. H. L, pp. 4, 7, & 10;—Mecn. H. L. Vol. II. pp. 85, 87.
True the sister is source of production of the maternal grandson to the father of the late owner, but this is not a cause of title;—were it otherwise, any woman (as already observed) who might produce a preferable heir would have title to inherit. As a rule, no ground or cause whatever is admitted as a title to a sister or any woman to inherit: women are expressly debarred from inheriting, by the following text: "Wealth was ordained for the sake of sacrifices; therefore it should be allotted to persons who are concerned with religious duties, and not be assigned to women, to fools, and to people neglectful of holy obligations."* Boudháyana, after premising "a woman is entitled," proceeds—"not to the heritage; for females and persons deficient in an organ of sense or member, are incompetent to inherit." The construction of this passage is, a woman is not entitled to the heritage. But the succession of the widow and certain other women takes effect under express texts, without any contradiction to this maxim:† the right of the widow, the daughter, the mother, and the paternal grandmother, is an exception to the rule, and is established only under special texts.‡ But no text recognises a sister's title; on the contrary, Srí-krishṇa specially prohibits the sister's succession, thus: "Although the succession ought previously to devolve on the sister, as it goes to the daughter before the daughter's son, nevertheless she is excluded from the succession, because she is no giver of oblations at the periodical obsequies, being disqualified by sex. But the daughter's right of inheritance before the daughter's son takes effect under the special provision of the text: "As a son, so does the daughter of a man proceed from his several limbs, &c.§ Jagaṇ-nátha also does the same, saying: "It should not be objected that, were it so, the sister and the rest might claim the inheritance, because they confer benefits by means of their sons and other descendants. Their claim is obviated by the text above cited, and by Boudháyana declaring women to be in general incapable of inheritance; this does not contradict the right of the wife and the rest.

---

‡ These are to be found in this book, in the successions of the above mentioned heirs.
which is propounded by special texts." (Coleb. Dig. Vol. III. p. 528.) It is remarkable, that the pāṇḍit who gave the last five out of the above seven irregular and repugnant vyavasthās, has elsewhere* well refuted himself and adhered to the principles of Jīmūta-vāhana and the rest as already quoted.

Of the vyavasthās in question, Nos. 5 and 7 were rejected by Mr. Walpole when deciding the case of Lakkha-priyā versus Bhairab-chander Choudhurī and others (ante, p. 284.) The correctness of the decision in that case is, as it appears to me, unquestionable. The other repugnant vyavasthās have not, however, shared the same fate. On the contrary, most of them have been permitted to stand in the following decisions.

CASE No. 20.

In the case of Krishṇa-lochan Bose and others versus Tārīṇi Dāsī and others, Rām-dušāl Nāg’s application for special appeal was rejected by the Sudder Court, (sitting Mr. Fombelle,) in consideration of a vyavasthā of Shobhā-rāy Sarmā, Brindāban-chander Sārmā, and Chatur-bhuj Sarmā, pāṇḍits of the Sudder Court. This declared that sons, born and unborn, of a whole sister (married within the proper time) would take her predeceased father’s estate, which had vested in her minor brother, who had died before his marriage. Her son excluded his paternal first cousins and son of a half sister.”—S. D. A. Rep. Vol. V. p. 55, 24th August 1830.

CASE No. 15.

Karunā-moyi and others versus Joy-chander Ghose.

Kirti-nārāyaṇ Dutt, who survived his brothers Kāshī-prashād Dutt and Pratāp-nārāyaṇ Dutt, died in 1200 B. S. leaving a wife, a minor son, Gorā-chānd Dutt, and a minor daughter, the plaintiff. The wife died in 1202; and the minor son also died a mere child, and unmarried. The substance of the plaint was this:—“My uncles are dead. Their sons, the defendants, assumed charge of the joint estate, in which my father held one-third share. I married in 1206, when 10 years of age, and continued to receive an allowance in grain and money, from my cousins, out of the profits of the joint estate. This (after I had become adult, and produced a son, Mohan-lāl,) they stopped. I sue for one-third of my father’s estate.”

* That is in Karung-moyi v. Joy-chander Ghose, cited in this and other pages. q. v.
The defendants, nephews of plaintiff's father, pleaded that, by the Hindu law, they were heirs to their paternal cousin, plaintiff's brother; and had taken, as such, the share which devolved on him by his father's death. Such share, by an adjustment in 1199, was settled to be one quarter.

The plaintiff having died, her husband the respondent pursued the action, in behalf of their minor son. The Zillah Judge, on 2nd March 1825, in favour of respondent, (as guardian of his minor son,) passed judgment; which was confirmed in the court of appeal, on 31st May, 1826, by Mr. C. Smith, judge of that court. From the above judgment a special appeal was preferred to the Sudder Dewanny Adawlut, and Mr. Ross recorded his opinion that a special appeal, on the part of all the appellants, should be admitted.

Mr. Dorin, the fourth Judge, by whom the matter was next heard, directed, on the 13th September, that the Vyavasthā of the pandit of the court of appeal should be referred to the pandits of the Court for report. Mr. Dorin died in the interim, and on the 17th January, 1828, Mr. Turnbull recorded the verbal report of the pandits (Voidyanāth Misra and Rām-tanu Vidyābāgish.) It pronounced the opinion of the pandit of the court of appeal to be erroneous. In consideration of this, and the reason adduced by Mr. Ross, the special appeal was admitted. Both the parties joined issue on,—the question of Hindu law, involved in the case,—and the relevance of the rule of limitation. On the part of respondent, was exhibited the Vyavasthā of the pandits of the Sudder Dewanny Adawlut, delivered in 1812, on the occasion of the motion of Rām-dulāl Nāg, for admission of a special appeal.

The case came on for trial before Mr. M. H. Turnbull, on the 15th July 1830. Hirānanda Misra, the acting pandit of the Court, whom he verbally consulted, confirmed the accuracy of the Vyavasthā just noticed, and the opinion of the pandit of the court of appeal. Mr. Turnbull dismissed the appeal with costs, and affirmed the judgment of the lower court.

The above judgment was confirmed in review, after deliberate consideration, under these circumstances. On the 18th November 1830, the appellants, Rām-kishor Dutt, the widow of Kālā-chánd,
and the new guardian of Bhoirab-chander, applied for a review. They insisted that the opinion of the officiating paṇḍit, Hirānanda Mīra, was erroneous. On the 15th January, 1831, Mr. Turnbull required Voidya-nāth Mīra, the paṇḍit of the Court, to deliver a written opinion, in regard to the two Vyavasthās justified by Hirānanda Mīra. This he did on the 9th March, in a most elaborate exposition, in which he pronounced those Vyavasthās inaccurate, and declared that the proprietary right to the estate of the plaintiff's brother, on his death, had immediately vested in his surviving heir (then existing) nearest in the defined order of succession. The paṇḍit in particular combated the opinion of his predecessors above mentioned. The first authority (See ante, case 20) adduced by them established, that the father's daughter's son took deceased's estate,—if existing at the time of his death; but not that the ownership in the estate should remain in abeyance, and at the end of an indefinite time, the succession vest in a sister's posthumous son. As for the second proof, that regarded the case of a paternal partition, and prohibited the father from dividing a lineally descended property (kramāgata) amongst his sons, while the mother was yet fecund, lest the patrimonial support (vritti) of the after-born should fail. Now the estate of the maternal uncle was not considered such, in respect to his sister's son; on the contrary, the succession of the latter was casual, and, by its diversion from the sister's son, the condemned act of deprivation of subsistence did not arise. The writers of the Bengal school recognised as causes of property,—relation to the owner—and his death. A third cause was added,—the defect of preferable heirs. According to the doctrine of some books, in regard to lineal male issue, birth alone was a cause. Now this was two-fold. It might be referred to the period of conception, or to actual production. Either condition was wanting in the case of plaintiff's son; who, therefore, under this view, could have no property in his maternal uncle's estate. Again, inspired legislators had made provision for the custody of the estate of minors, but neither they, nor any writer, had provided for the charge of the estate of the unborn, during an indefinite time: therefore the unborn could have no property. On this opinion, on the 21st March, 1831, Mr. Turnbull admitted a review, requiring the respondent to reply.
The respondent, accordingly, controverted the opinion of Voidya-náth Misra. He contented, that the text of Many had not the contracted application argued by that pándit, and insisted on the accuracy of the opinion given by the former pándit in the case of Rám-dulál Nág versus Rájeshwári and another. Voidya-náth Misra had argued, that a succession, once devolved, was indefeasible by the subsequent birth of a preferable heir. The error of this doctrine was apparent from the case of a son born to a man, who had become an ascetic; and was thus civilly dead. Such son could validly claim partition of his elder brothers, who had succeeded to the patrimony. The respondent further referred to the cases of—Bijoyá Debé, Appellant, and Sulakšhna, Appellant, (vide Select Reports, Vol. I. pages 162 and 324,) and Krishna-lochan Bose and others, the sons of Rájeshwará above named (See ante, case 20)—as opposed to the doctrine of Voidya-náth Misra, and supporting his case. He also subsequently adduced the Vyavasthá given on 1st August, 1831, by Voidya-náth Misra himself, in the case of Kamalá-kánta Roy and another versus Gangá-charan Sen.

The exact tenor of this (Vyavasthá) will appear from his second Vyavasthá (subsequently delivered by the pándit in this case,) which will be presently recited. It is sufficient here to notice that, to the exclusion of paternal uncles, it upheld the succession of the sister, in right of her male issue (the father’s daughter’s sons) which she might produce. Considering this, Mr. Turnbull asked Voidya-náth Misra, why in his first Vyavasthá of the 9th March, 1831, he had omitted mention of such right, in regard of Chander-málé, the sister of Gorá-chánd. Voidya-náth explained, that it had been referred to him to declare whether the opinion of the pándit of the court of appeal, was conformable to law or not. That pándit had declared the right of Lal-mohan, the son of Chander-málé. Now he was non-existent on the death of her brother, and therefore could then have no right. In this regard, therefore, he (Voidya-náth Misra) had pronounced his opinion inaccurate. In reality, on her brother’s death, Chander-málé, as the source of production of father’s daughter’s sons, was entitled to succeed; and this position he had laid down in the Vyavasthá in the case of Kamalá-kánta Roy. Mr. Turnbull now required a written opinion from the pándit, as to the succession to the estate of Gorá-chánd on his death,—the survivors being his sister and agnate cousins.
On the 26th November, 1831, the pandit accordingly delivered a vyavasthā, in the terms of that given in the case of Komalā-kánt Roy and to this effect:—The sister’s son, (considered as the father’s daughter’s son,) is an heir preferable to the paternal uncle’s son. A single son of a sister, succeeding to his maternal uncle’s estate, must share the same with his after-born brothers. The sister is the source of production of daughter’s sons to the father, and the medium of their relation. If, at the death of her brother, Gorá-chánd, no son of Chander-máli existed, still, (since the right of the father’s daughter’s sons could not be otherwise established,) she was entitled to enter on the succession, and hold until production of her male issue. This too was analogous to the succession of the daughter to the estate of the father, who died leaving no male issue or widow. The sister’s son, and not the sister, was entitled to the property; for he offered oblations at periodical obsequies which the sister was incompetent to offer. This opinion was declared to be in conformity to the Dáya-bhágā, and other works current in Bengal, and supported by five cited proofs. 1. Passage in the Dáya-bhágā, declaratory of the right of the father’s daughter’s son, (vide Colebrooke’s translation, Ch. XI. Sect. 6, para. 8, page 214.) 2. Gloss of Śrī-krishṇa thereon (vide note to ibidem.) 3. Text of Jáñyavalkya, cited in the Dáya-bhágā in the chapter which treats of the participation of sons born after partition. This provides for their shares, from the apparent estate, (vide Coleb. Dá. bhá. Ch. VII. para. 12.) 4. Part of the capitalization of Śrī-krishṇa, which declares the right of the father’s daughter’s son, next after the grandson of the brother, (vide Colebrooke’s translation of Dáya-bhágā, note at the foot of Ch. XI. Sect. 6.) 5. The text of Jáñyavalkya as to the order of heirs, cited in the Dáya-bhágā, Ch. XI. Sect. 1, para. 4.

On the 5th December, 1831, Mr. Turnbull, with reference to the above exposition, confirmed the original judgment by him past.—15th July, 1830. S. D. A. R. Vol. V. pp. 42—46.

Musul. Su-lakhyaná versus Rám-dulál Pánde.

In this case the pandits of the Sudder Dewanny Adawlut have given a vyavasthā to the following effect.—‘The zemindar in dispute, formerly held by Rájá Jada-rám and his son Cunwar-náráyan, and by the son of the latter, Joy-náráyan, and after Joy-náráyan’s
death by Su-gandhá, his step-mother, (the second wife of Cunvar-náráyan), legally devolves, after the death of Su-gandhá, to Shámá-praséé, A’nanda-lál, Nanda-lál, and Lakkhó-náráyan, sons of the daughters of Jadu-rám, who were then alive, and to Gangó-náráyan and Madhu-rédan, two other sons of the daughters of Jadu-rám, who are since born, and the whole six heirs being now alive, in equal portions. The pandits being further questioned, whether supposing one or more sons to be hereafter born to Hari-priyá, the surviving daughter of Jadu-rám, they would be entitled to any share of the inheritance? and it was declared in answer, that they would be entitled to share with the other daughter’s sons of Jadu-rám, who are now living.

The decrees of the Zillah and Provincial Courts, as far as they rejected the adoption and title of Sunder-náráyan, were affirmed. But as there appeared to be now six daughters’ sons of Jadu-rám, viz. Rán-prasad, A’nanda-lál, Nanda-lál, Lakkhí-náráyan, Madhu-rédan, and Gangó-náráyan, (the two last born of his daughter Hari-priyá since Su-gandhá’s death,) and according to the exposition of the Hindu law, delivered by the pandits, these six were entitled to share the zemindarée equally with reservation of the eventual birth of other sons to Hari-priyá, who would be entitled to share with the other daughters’ sons; the zemindarée was adjudged, with this reservation, to the six daughters’ sons of Jadu-rám above specified, as being the heirs at law to Joy-náráyan, who held the estate before Su-gandhá, with an account of mesne profits. *—27th May, 1811. S. D. A. R. Vol. I, pp. 324—330.

Advocata-chónd Mondal and others, Petitioners.

Of several claimants, among whom were the sons of three paternal uncles of the deceased, an unmarried childless Hindu, his three sisters, a step-mother, and a sister-in-law, the Zillah court, in conformity with the opinion of the law officer, awarded certificates, under Act XX. of 1841, to a sister who had produced male issue, as well as to the sister-in-law, whose husband had died seventeen mouths

* This decision recognises the succession of the grandfather’s daughter’s son. It is put here because the Vyavasáthá upon which it is based is repugnant to the established principles above quoted; and because the origin or cause of title of the father’s daughter’s son and half of any other relative is the same. See ante, pp. 244, 245.
previous to the death of the deceased. This decree was reversed by the Sudder Dewanny Adawlut, on the appeal of the deceased's paternal uncle's sons, and the award of the certificate to the sister alone, who had borne heritable issue, affirmed, after reference to the 'paddit' and the printed decisions of the court, the right of the sister, as trustee for her heritable issue born before the death of his maternal uncle, as well as for the future production of such issue, though not born or begotten at the time of the death of the maternal uncle, being recognised by the law of Bengal.—17th August, 1843. Sev. Rep. Case 131.

Thus it is apparent that the erroneous Vyavasthas above given have misled the Court. We may not look for a Colebrooke, that eminent Sanskrit scholar, in each occupant of the seat of judgment; but it is scarcely too much to expect that every judge like Mr. Walpole (who deserved much credit for having drawn the right conclusion in spite of so many wrong and repugnant Vyavasthas delivered for the purpose of misleading him,) should be able to know or ascertain whether a Vyavastha presented to him is repugnant to, or consistent with, the plain and recognised principles of law, which all have the opportunity of being acquainted with, through the published translations and treatises. Had such inquiry been made, the glaring errors of the Vyavasthas in question would not have been adopted in judicial expositions of the law. As it is, these Vyavasthas have served to cast a slur upon others which are really deserving of confidence. They have misled and must continue to mislead litigants and inquirers unless authoritatively exposed. In order to effect such exposure in a way the least open to cavil and dispute, the best living authorities and scholars of reputation have been consulted and requested to deliver their opinions, and the following is the opinion of one of them, Babu Prasanna-kumár Thákur:

MY DEAR SIR,

The point on which you desire my opinion may be considered to be involved in the following question.

On the death of a proprietor, without issue or widow, and leaving no parents or any lineal descendant of theirs as far as the great-grandson, but leaving a sister of the whole blood, does his property
devolve on those sons only of such sister who are alive at the time of death of the proprietor, or also on those who are born subsequently to that event?

On referring to the Dāya-bhāga,* Chap. I. paragraph 25, and the Mitākṣhāray,† Chapter I. Section 1, paragraph 23, I come to the conclusion that by the former the survival at the time of the demise of the proprietor, and by the latter, birth during the life time of the proprietor, constitute the right of acquisition. In fact, according to the Bengal school, the inchoate right of an heir apparent becomes perfect by the subsequent event. Taking this as a starting point, which is admitted by all the writers of that school, I consider that those who are born subsequent to the death of the proprietor cannot be entitled to a share of the estate, as the right has already been vested in those male heirs who survived at that time, which cannot be disturbed by the subsequent birth. This is a general doctrine, which cannot be deviated from without a special rule in the laws of inheritance in favour of any after-born party; and whenever such provision is made by a proprietor, the right of the after-born is recognised.

The advocates in favour of such after-born party cite in support of their views the text inserted in Paragraph 45, Chap. I. of the Dāya-bhāga, viz.—"They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of the hereditary maintenance is censured." The commentator Śrī-krīṣṇa construes the passage to be only applicable to ancestral hereditary property i.e. property which has descended from the grandfather or other ancestors. Relying on this construction, the authority above quoted cannot be adduced in support of the unborn male descendants of the sister, as, in consequence of her being married, and having engrafted herself on the family of her husband, her male descendants form a quite distinct and separate branch of the family. Besides, I have always held, and still hold, that this passage prescribes a moral duty rather than a legal obligation; as, were it held to have strictly legal force, it would militate against the admitted right of a Hindu father in Bengal to

---

* That is, Colebrooke's translation of the Dāya-bhāga and Mitākṣhāray.
dispose of his property according to his own choice by will, gift, or otherwise. Apart from this consideration, it is to be observed that the very terms of the text, providing for sons yet unbegotten, refer to a contingent and future, and not to a present, right. The dissipation censured in the passage is not intended to amount to a legal prohibition, as we find in Chap. II. Paragraph 28, where it is said: "But the text of Vyāsā, exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." The passage, "They who are born," &c., quoted above, really means that a married man is bound to provide for those children who are born, those who are in conception, and those who are yet unbegotten; in other words, not only for his actual family, but for those who may yet come into being; and any dissipation of property which may affect the maintenance of his offspring is justly censurable on moral grounds. This is a principle not peculiar to the Sanskrit legislators, but common to all civilised nations. But to construe such a passage as creating a right for the unborn or unbegotten at the expense of those that are born and living, is any thing but consonant to the meaning of the text or the spirit of the law.

Were it a question, whether the dissipation of property that may descend to a sister's son can be considered a moral wrong, I should reply in the negative. The commentator Śrī-krishṇa, in limiting the construction of the passage, "Those who are born," &c., before quoted, in favour of the right of the grandson and other lineal descendants to the estate of the grandfather or direct ancestor, evidently had in view the fact that they have or may have an inchoate right by birth during the life-time of the proprietor, and that their right becomes perfect by his death, natural or civil, or his voluntary abandonment of the property. It is the dissipation of the property likely to descend to such person, whether born or unborn, and consequently the dissipation of their hereditary maintenance, that is condemned. That doctrine surely cannot be applied either to the sister's son surviving at the decease of the owner, or the sons of such sisters, who are in conception or yet unbegotten. The right, therefore, of the sister's son must come under the general law of inheritance,
vis. the survival of one at the time of the demise of the owner. I might have given you my opinion at greater length, and with more illustrations, if my leisure permitted; but what I have written will, I believe, suffice for your purpose.

Yours sincerely,

30th June, 1856.

PROSONNO COOMAR TAGORE.

The point, however, may now be said to be at rest by the two recent decisions of the late Sudder Court in the cases of Keshab-chander Ghose versus Bishnu-prasad Bose, (See ante, p. 7,) and Birejá-moyét versus Naba-krishna Roy, (cited below,) both of which exactly correspond with the above opinion, and there can no longer exist any doubt on the point in question.—The first of these decisions by restricting in exact accordance with the Dáya-bhága and the commentary thereon the applicability of the text—"those who are born, those who are yet unbegotten, and those who are actually in the womb, all require the means of support, the dissipation of the hereditary maintenance is censured" to the partition of the property of the ancestors in the paternal line, and interpreting it to prohibit such partition while the mother is still fecund, lest the patrimonial support (writti) of the after born should fail, and declaring it at the same time as conveying a moral rule, rather than a binding one, has denied the succession of such a son of the father's daughter as was neither living nor conceived at the time of his maternal uncle's death.—The decision in the second case has declared the father's daughter's son (sister's son) who was in utero at the time of his maternal uncle's death, and was born with vitality after his death, entitled to inherit from him. These decisions, therefore, coupled with the findings in Lakkhi-priyá versus Bhoirab-chander Choudhuri,* and in Álam-chander Dhar versus Bijoy-gobind Barral,† which correspond with the first of the two decisions above cited, may be said to have settled the law on the point in question: the conclusion therein arrived at being—that a father's daughter's son is entitled to inherit, if living or conceived at the time of his maternal uncle's death, and not entitled to inherit from him if not existing at that time, but subsequently begotten and born.

* See ante, p. 234.
† See ante, p. 240.
The only point we have to determine in this appeal is, whether the estate of Banwári-lál became vested after his death in his nephew the son of his sister Bírajá-moyi or not. The facts are not disputed, namely that Banwári-lál died childless, that at the time of his death his uterine sister Bírajá-moyi was foregone in pregnancy and within 19 days of Banwári-lál's decease gave birth to a son who however died at an early age. There is also no dispute that according to Hindu law had the son of Bírajá-moyi been born before the death of Banwári-lál, he would have been the legal heir of Banwári-lál, the only contention being that as he was not then actually born; he cannot succeed to the inheritance always devolving according to Hindu law upon the nearest heir then in existence when the succession opens. Thus in the present case favoring the rights of Naba-krishna the grandson of Rang-lál the grandfather of Banwári-lál.

The Principal Sudder Ameen has decreed for the plaintiff as the nearest heir in existence at the time of Banwári-lál's death. He observes that the only text in the Dáya-bhága, which contemplates that the succession to property will remain in abeyance in expectation of the birth of heirs, is given in the 45 Section of the 1st chapter of Colebrooke's translation, and is as follows.— "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support, and the dissipation of the hereditary maintenance is censured, but that this text has been held by all commentators to apply only to the property of the paternal grandfather and refers to those entitled to maintenance therefrom, and will not therefore apply to sister's son who is of different blood, and not entitled to maintenance from paternal grandfather's estate.

In the appeal before us the meaning of this text has also been much pressed upon us by the respondent's pleader as being, he said, the only ground upon which the appellant relied as supporting the claim of her son as a posthumous heir of his uncle Banwári-lál, while the pleader for the appellant quoted the Vyavasthá, given in Shánáchurn's Digest of the Hindu law to the effect that although the exis-
tence of the son at the time of the father's death alone constitutes
the son's title, yet the expression 'father' and 'son' (severally) indicate
any relation; that is to say, the expression 'father' is meant to signify
the predecessor or former owner, and 'son' is meant to indicate any
relative included in the order of succession as entitled to inherit; and
also that the phrase "the existence of the son at the time of the father's
death' indicates also the fatal existence of an heir in the womb. Our
attention was also directed by both parties to the late Sudder Court's
decision in the Case of Keshab-chander Ghose and others appellants
dated the 13th of September 1860 as bearing upon the point at issue
in this appeal, and as the tenor of the remarks, recorded by the
deciding Judges in their Judgment, indirectly confirms what appears
to us to be the most reasonable view of the question before us: we
have followed up the reasoning therein propounded to a conclusion
applicable also to the present case. The question which the Judges
of the late Sudder Court had before them on the 13th December 1860,
was regarding the succession of a sister's or father's daughter's son
not conceived at the time of the death of his maternal uncle, and on
the ground that "they were not aware of any rule in any country by
which the inheritance remained in abeyance for an unbegotten heir;"
they dismissed the appeal which was founded upon a plea to the con-
trary. Now it is clear that the decision is only against the succession
of the sister's son, because he was not conceived or begotten at the time
of the uncle's death, and no rule of law allowed the inheritance to
remain in abeyance for an unbegotten heir, but the whole tenor of the
Judgment shows that, had the heir been conceived at the time of the
deceased owner's death, his rights would have recognised and
declared by the court upon the ground that it is a well understood
principle in all countries that on the birth of a posthumous son of
the deceased owner, property which has once vested by the death
of the owner, thereby becomes divested. This rule, we venture to
think, is not dependent upon any meaning of the text of the Dāya-
abhāga quoted and referred to by the P. S. Ameen, that text has
clearly reference only to the division of hereditary property among
sons by the father while the mother continued capable of bearing
children, which would deprive those subsequently born of subsis-
tance and was therefore censurable, but does not apply to the case of
a posthumous heir. It appears to us then that it is not upon the
ground of the above text only that the posthumous son succeeds, but
scholars be dissatisfied with his declaring the title even of those persons whom he, on the ground of benefits, has enumerated in the order of succession, he says: "If the learned be yet unsatisfied, this doctrine may be derived from the express passages of law. Still the same interpretation of both texts (of Manu) must be assumed." (See Dā. bhā. p. 223.) Raghu-nandana also has recognised the heritable right of the sons of daughters of the said three ancestors only.

What has been declared by the author of the Dāya-krāma-sangraha is however, respected and adopted by the modern authorities, native as well as European. But Jagan-nātha's opinion as above quoted, does not seem to be respected and supported.*

Further Remarks. In the Dāya-bhāga, Dāya-tattva and Dāya-krāma-sangraha, as well as in the Vīvāda-bhangārāsava compiled by Jagan-nātha, no distinction is made between the whole and the half blood in the succession of the sons of the daughters of the father, grandfather, and great-grandfather. On the other hand, Śrī-kṛṣṇa in his Dāya-krāma-sangraha quotes the opinion of Āchārīya Chūramaṇi and acquiesces therein. Thus: "The son of the proprietor's own sister, and the son of his half sister have an equal right of inheritance. This is the opinion of Āchārīya Chūramaṇi." (See Dā. kra. Sang. p. 19.) The author of Vīvāda-bhangārāsava expressly denies such distinction, saying: "In the succession of brothers' sons, a distinction between the whole and the half blood must be understood, not in the case of daughters' sons. But some lawyers consider it as the opinion of Jīmūta-vāhana, that, in the succession of the sons of the father's daughters and so forth, a distinction is taken between uterine and half sisters. Herein Śrī-kṛṣṇa Turālāṅkāra does not acquiesce, because no law is found (expressly) declaring the participation of a maternal grandmother in the funeral cake offered to the maternal grandfather. In the succession of the paternal grandfather's son, grandson, and great-grandson, the same distinction must be admitted as before in respect of their relation to the (late proprietor's) father, by the whole or half blood: but no distinction is taken in the case of daughters' sons. On failure of the pater-

* We have not says Mr. Colebrooke, the very translator of Jagan-nātha's Digest, the same veneration for him (Jagan-nātha,) when he speaks in his own name, and steps beyond the strict limits of compiler's duty. See Str. H. L, Vol. II, p. 151.
nal great-grandmother, the descendants of the paternal great-grandfather, including his daughter’s son, as before, successively claim the inheritance. Here again a distinction must be admitted in the succession of the paternal grandfather’s son, son’s son, and grandson’s son, according to their relation to the paternal grandfather by the whole or the half blood: but not in the instance of his daughter’s son. In Colebrooke’s translation of Śrī-krishṇa’s recapitulation of the commentary on the Dāya-bhāga no such distinction is also to be found, the part being rendered thus: “On failure of the brother’s grandson, the father’s daughter’s son is the successor, whether he be the son of a sister of the whole blood, or the son of a sister of the half blood. If there be none, the father’s own brother is heir; or, in default of such, the father’s half brother. On failure of these, the succession devolves in order on the son of the father’s whole brother, on the son of his half brother, on the grandson of his whole brother, and on the grandson of his half brother. In default of these, the paternal grandfather’s daughter’s son inherits; and, in this instance also, whether he be the son of the father’s own sister, or the son of the father’s half sister: and, in like manner, (the whole blood and half blood inherit alike,) in the subsequent instance of the succession devolving on the son of the great-grandfather’s daughter” (Coleb. Dā. bhā. p. 225.) In the printed editions and many of the manuscript copies of Śrī-krishṇa’s commentary on the Dāya-bhāga and in the commentaries of Maheshwara and others on the same work, the distinction of the whole and half blood is, however, to be found in the succession of the sons of the grandfather’s daughters, and of those of the great grandfather’s daughters, though not expressly made in the succession of the sons of the father’s daughters.

Although the opinion of the aforesaid authors is respected and followed, yet it must be admitted that the distinction made in the commentaries above alluded to is neither unreasonable nor inconsistent, based as it is not only in preference to the whole blood, but also on consideration of the sons of the sister, paternal aunt, and grandfather’s sister of the whole blood, conferring comparatively more benefit than the sons of those of half blood. For instance, in the Sapatiṅka-shrāddha, the oblation-cake is offered by the daughter’s son to his maternal grandfather jointly with his own maternal grandmother, and not with his maternal grandfather’s other wife or wives.
The Dáya-bhóga, Dáya-táttva, Sré-krishna’s commentary of the Dáya-bhóga, and his Dáya-krama-samgraha, authorities of the greatest weight in this country, and the Viváda-bhangáraṇava, which is more current than the other recent compilations, concur as to the order of the (first) twelve successors, from son to the father’s daughter’s son; but after this, they differ in some instances in the order of successors, as well as in their number. All these are given below, with remarks on the order and number of the successors, in which each of the works differs from the rest.

"On failure of heirs of the father down to the great-grandson, it must be understood that the succession devolves on the father’s daughter’s son, in like manner as it descends to the owner’s daughter’s son. The succession of the grandfather’s and great-grandfather’s lineal descendants, including the daughter’s son, must be understood in a similar manner, according to the proximity of the funeral offering. On failure of lineal descendants of the paternal great-grandfather, down to the daughter’s son, the property devolves on the maternal uncle and the rest. On failure of such kindred in this degree, the distant kinsman (Sakulya)* is heir.—The distant kinsman is one who shares the divided oblation,—as the grandson’s grandson or other descendant within three degrees reckoned from him; or as the offspring of the grandfather’s grandfather or other remoter ancestor. Among these the grandson’s grandson and the rest are nearest. On failure of such, the offspring of the grand-father’s grand-father and the rest inherit.

If there be no such distant kindred, the Samáñodakas or kinsmen allied by common libation of water, must be admitted to inherit. On failure of these, the spiritual preceptor is the successor; in default of him, the pupil is heir; on failure of him likewise, the fellow student. In default of these, persons bearing the same family name (gotra) are heirs; on failure of them, persons descended from the same patriarch (právára) are the successors. On failure of all heirs as here specified, let the Bráhmanas take the estate. In default of them, the king shall take the property, excepting, however, the property of a Bráhmaṇa.

* Three ancestors, from the grandfather’s grandfather upwards, and three descendants from the grandson’s grandson downwards, are denominated Sakulyas, as partaking of the divided oblations, since they do not participate in the same offering.—Daś. bhā. p. 172.
failure of descendants from the same patriarch and of persons bearing the same family name, as well as of Brāhmaṇas, must be understood as occurring when there are none inhabiting the same village: else an escheat to the king could never happen."—Dā. bhā. pp. 214—219.

"The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil, and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. The student must be understood to be a professed one; for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations. Thus has the distribution of the property of one who leaves no male issue been explained." Dā. bhā. pp. 219—224.

Remark. The writer of this work, Jīmūta-pāhana, is the founder of the Bengal school, being the author of the doctrine which it has adopted; all that are laid down by him are, with a very few exceptions, respected; and his texts are quoted and references are made to them by almost all the compilers current in this country.

Order of succession according to the Dēṣa-tatva.

"On failure of heirs of the father down to his daughter's son, the paternal grandfather succeeds; failing him, the paternal grandmother; in default of her, the offspring of the grandfather, including his daughter's son; (in their default) the paternal great-grandfather, paternal great-grandmother, and also their offspring succeed in like manner. On failure of persons who are givers of oblations in which the deceased may participate, the succession devolves on the Bandhu,—that is, the maternal grandfather, maternal uncle, and so forth. Here also, as in the instance of father and paternal kinsmen, if the maternal grandfather be living, he is heir; on failure of him, the maternal uncle and other maternal kindred succeed in order. On failure of these, the distant kinsman (Sakulya,) who shares the divided oblation, is heir; viz. the grandson's grandson, his son, and his son's son, who are Sakulyas in the descending line; and the offspring of the grandfather's grandfather and the rest. By the word Bāndhava, used in the text
of Vahrapati, is meant that the near cognate kindred of the father and mother are heirs. The Bandhas are as follows:—"The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle must be deemed his father's cognate kindred. The sons of his mother's maternal aunt, the sons of his mother's paternal aunt, and the sons of his mother's maternal uncle, must be reckoned to be his mother's cognate kindred.—Dh. T. Sans. pp. 61, 62.

REMARK. The author of this book has in general strictly followed the doctrines of Jimala-vahana. On a few points, however, he has differed from his master; that is, he has supplied some deficiencies, added some new heirs, and omitted to mention things which are laid down in the Dhyya-bhaga, and are very current. Thus in the order of succession, the author has, to the heirs designated by Jimala-vahana, added the maternal grandfather, and, as Bandhas, the sons of the late proprietor's mother's sister, the sons of his father's maternal aunt, the sons of his mother's maternal uncle, the sons of his mother's maternal aunt, the sons of his father's maternal aunt, and the sons of his mother's maternal uncle. Of these, the sons of the proprietor's father's maternal uncle and aunt, and the sons of his mother's maternal uncle and aunt, are not admitted as heirs by Sri-krishna and Jagannatha. The author has moreover omitted the spiritual preceptor, and the rest, who are declared heirs by Jimala-vahana and others.

Order of succession according to Sri-krishna's commentary on the Dhyya-bhaga. On failure of the brother's grandson, the father's daughter's son is the successor: whether he be the son of a sister of the whole blood, or the son of a sister of the half blood. If there be none, paternal grandfather is heir; failing him, the paternal grandmother; in her default, the father's own brother is heir; in default of such, the father's half brother. On failure of these, the succession devolves in order on the son of the father's whole brother, on the son of his half brother, on the grandson of his whole brother, and on the grandson of his half brother. In default of these, the paternal grandfather's daughter's son inherits; in this instance also, the son
of the father's whole sister inherits first; on failure of him, the son of the father's half sister. Such is also the case in the succession of the sons of the great-grandfather's daughters. On failure of these heirs, the paternal great grandfather is the successor. If he be dead, the paternal great-grandmother inherits. If she be deceased, the paternal grandfather's own brother, his half brother, their sons, and grandsons, and the great-grandfather's daughter's son are successively heirs. On failure of all such kindred who present oblations in which the deceased owner may participate, the succession devolves on the maternal grandfather and uncle and the rest who present oblations which the deceased was bound the offer. The maternal grandfather is however entitled to inherit first; on failure of him the heritage passes successively to the maternal uncle, his son, and grandson. On failure of these, the right of inheritance accrues to the remote kindred (Sakulya) in the descending line, who present the residue of oblations to ancestors with whom the deceased owner may participate: namely, to the grandson's grandson and other descendants for three generations in succession; in default of these, the inheritance returns to the ascending line of distant kindred, who enjoy the residue of the oblations offered by the deceased owner; namely, to the paternal grandfather's grandson and other ancestors, and their offspring in the order of proximity. On failure of these, the succession devolves on the Samânodakas or kindred allied by a common libation of water. In default of them, the spiritual preceptor is heir; or, if he be dead, the pupil; on failure of him, the fellow student in theology. If there be none, the inheritance devolves successively on a person bearing the family name and on one descended from the same patriarch, being in either case an inhabitant of the same village. On failure of all relatives as here specified (the property devolves on Brâhmaṇas learned in the three Vedas and endowed with other requisite qualities: and, in default of such,) the king shall take the escheat, excepting however the property of a Brâhmaṇa. But the Brâhmaṇas, who have read the three Vedas and possess other requisites, shall take the wealth of a deceased Brâhmaṇa. So the goods of an anchorite shall devolve on another hermit considered as his brother and serving the same holy place. In like manner the goods of an ascetic shall be inherited by his virtuous pupil; and the preceptor shall obtain the goods of a professed student. But the wealth of a temporary student is taken by his father or other heir. Such is the abridged statement of the law of inheritance.
REMARK. This is the most celebrated of the glosses on the Dēya-bhāga of Jīmāṭa-vāhana. It has well illustrated the text by expressing what was implied by the terms sā (etc.) and anta (as far as,) and by expressing the distinction between the relatives of the whole and the half blood, and supplying the omissions and deficiencies. He has generally confirmed its positions, but sometimes modified or amended them. For instance, among the grandfather's and great-grandfather's descendants (in the male line) he expressly gives preference to those of the whole blood. In the succession of Sakulīyas, Jīmāṭa-vāhana laid down that, "the grandson's grandson, and the rest are nearest. On failure of such, the offspring of the patrernal grandfather's grandfather inherits;" but did not explicitly recognise the heritable right of the Sakulīyas in the ascending line, i.e. patrernal grandfather's grandfather and the father and grandfather of the latter. But the commentator has modified or amended it, saying: "On failure of these, the right of inheritance accues to the kindred in the descending line, namely, to the grandson's grandson, and other descendants for three generations in succession. In default of these, the inheritance returns to the ascending line of the distant kindred; namely, the grandfather's grandfather and the rest, and their offspring in the order of proximity." Between the paternal great-grandfather's daughter's son and the maternal uncle the commentator has interposed, as heir, the maternal grandfather, who is not designated as such by Jīmāṭa-vāhana. Further, the author says: "a failure of descendants from the same patriarch and of persons bearing the same family name, as well as of Brāhmaṇas, must be understood as occurring when there are none inhabiting the same village; else an escheat to the king would never happen." The commentator, leaving out the condition of a Brāhmaṇa being an inhabitant of the same village, says: "the inheritance devolves successively on a person bearing the family name, and on one descending from the same patriarch, in either case being an inhabitant of the same village. On failure of all relatives as here specified, the king shall take the escheat, excepting however the property of a Brāhmaṇa. But the property of a Brāhmaṇa shall be taken by Brāhmaṇas, who have read the three Vedas and possess other requisite qualities."

* Colebrooke's translation of Srī-krishna's recapitulation in the commentary on the Dēya-bhāga differs from the text of that recapitulation as above quoted, in omitting the succession of the paternal great-grandfather, and paternal great-grandmother, in inserting the succession of paternal grandfather and grandmother after their own daughter's son,
VYAVASTHA-DARPANA. 271

In the commentary on the Dāya-bhāga, Sri-kṛṣṇa differs from his original treatise Dāya-kramasāngrahā in maintaining the distinction between the whole and the half blood among the brothers of the father and grandfather, and their descendants, and in not recognising as heirs the sons of the daughters of the late proprietor's own brother, of his father's brother, and also of his grandfather's brother; the maternal grandfather's father, his son, grandson, great-grandson, and daughter's son, and the maternal grandfather's grandson, his son, grandson, great-grandson, and daughter's son who are designated as heirs in the Dāya-kramasāngrahā; and in not declaring that a Brāhmaṇa must be an inhabitant of the same village, that on failure of a qualified Brāhmaṇa, in respect to the wealth of a Brāhmaṇa, a Brāhmaṇa residing in another village is the successor.

On failure of the father's issue including daughter's son, the paternal grandfather is heir to the property; on failure of him, the paternal grandmother. On failure of them, their issue, including the son of a daughter, shall inherit; and in the succession of the paternal grandfather's son, grandson, and great-grandson, the same distinction must be admitted as before, in respect of their relation to the (late proprietor's) father by the whole or half-blood; but no distinction is taken in the case of daughters' sons. Next the paternal great-grandfather is heir; in default of him the paternal great-grandmother; on failure of her, the descendants of the paternal great-grandfather, including his daughter's son, as before, successively claim the inheritance. Here again a distinction must be admitted in the

and in interposing the mother's sister's son between the maternal uncle and his son, as also in some other respects. Such difference and disagreement may be attributed to the mistake in the manuscript copy or copies from which that translation was made. I therefore could not all along adopt Mr. Colebrooke's translations, but had to retranslate the text from the last edition of the Dāya-bhāga. And the reason why I have preferred and adopted the last edition is given in the last Note at page 51. The omission of the great-grandfather and great-grandmother, and insertion of the grandfather and grandmother in the above place are evident mistakes and corruptions, inasmuch as in the original the paternal grandfather and grandmother are recognised heirs after the father's daughter's son, and the paternal great-grandfather and great-grandmother are put in the place where their son and daughter-in-law are inserted in the translation of the recapitulation. As to the interposition of the maternal aunt's son it is admitted to be a mistake by the translator himself, who remarks that the son and grandson of the maternal uncle ought to precede the son of the maternal aunt, by the analogy of inheritance on the father's side. (See Coleb. Dāf. Mag. page 226.)
succession of the paternal grandfather’s son, grandson, and grandson’s son, according to their relation to the paternal grandfather by the whole or the half-blood, but not in the instance of his daughter’s son. On failure of them, a more distant kinsman is heir, namely, the maternal grand-father, maternal uncle, his son, and son’s son; the maternal great-grandfather, his son, son’s son, and grandson’s son; the father of the maternal great-grandfather, his son, son’s son, and grandson’s son. On failure of the last respectively the next in order is heir. Again, their daughters’ sons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of the maternal great-grandfather. In this sense does Jāgnyavalkya use the term Bandhu. Such is the rule approved of by Śrī-kṛṣṇa Tarkā tankāra, who follows the opinion of Jīmāvāhāna. It should be here remarked that the sons of the son’s and the grandson’s daughters and the sons of a brother’s and nephew’s daughters, and so forth, claim succession in the order of proximity, before the maternal grandfather: for they also confer benefits by the oblation of the funeral cakes; on failure of them, a distant kinsman (Sakulya) is heir. Three persons ascending from the father of the paternal great-grandfather, and three descending from the son of the great-grandson, do not participate in the same funeral cake: they are therefore pronounced Sakulya, sharing divided oblations. In the first place, the son of the great-grandson is heir, next the grandson of the great-grandson, and after him the great-grandson of the great-grandson in the male line. On failure of these, the paternal grandfather’s grandfather: if he be dead, his daughter’s son and other descendants (to the third degree) who are givers of funeral cakes in the Pārvāṇa inherit in order; in default of them, the son, grandson, and great-grandson of the great-grandson of the grandfather’s grandfather in the male line have successive claims as givers of the remains of funeral cakes to the paternal grandfather’s paternal grandfather. On failure of them, the paternal great-grandfather’s paternal grandfather is heir; if he be dead, his son, grandson, and great-grandson, his daughter’s son, and the son, grandson, and great-grandson of the great-grandson (in the male line) have successive claims as before. On the failure of them, the paternal great-grandfather’s paternal great-grandfather, his son, grandson, and great-grandson, his daughter’s son, and the son, grandson, and great-grandson of the great-grandson (in the male line) similarly inherit
in order. On failure of all these, the Samánodakas, or persons connected by an equal libation of water, have a right to inheritance: the relation of Samánodaka extends to the fourteenth person. On failure of them, the spiritual preceptor is heir; if he be dead, the pupil; in default of him, the fellow student; then the descendants from the same ancient sage claim the succession; on failure of them, men sprung from the same primitive stock. On failure of heirs including kinsmen sprung from the same branch of venerable stock, the succession devolves on Bráhmaṇas. The want of heirs descended from the same holy sage, or from the same company of rishis, and the failure of Bráhmaṇas must be understood to be the non-existence of any such persons in the same village or town. Manu declares that on failure of virtuous Bráhmaṇas residing in the same town, the inheritance of a kshatriya and the rest shall escheat to the king. But the property of a Bráhmaṇa must never be taken by the king, consequently, on failure of honest Bráhmaṇas, he must give the property of a Bráhmaṇa to Bráhmaṇas in general. The spiritual preceptor shall take the property of the perpetual student in theology; the virtuous pupil, versed in the study of revelation concerning the supreme soul, and in preserving that sacred science, shall take the estate of an anchoret; and the brother by religious duties, being pupil of the same spiritual father, takes the wealth of a hermit. 'The brother by religious duties'—is one familiarly known as brother of the deceased—the subsequent term 'eka-tiththi' may signify, belonging to the same order of devotion. (Vide Coleb Dig. Vol. III. pp. 528—547.)

In the order of succession this book differs from both the works of Sri-krishṇa in intimating the opinion that the sons of the son's and grandson's daughters, and the son of a nephew's daughter, and so forth, claim succession in the order of proximity, before the maternal grandfather, and in inserting the son, grandson, and great-grandson of the great-grandson of the paternal grandfather's grandfather in the male line before the paternal great-grandfather's grandfather; the son, grandson, and great-grandson of the great-grandson of the paternal great-grandfather's paternal grandfather before the paternal great-grandfather of the paternal great-grandfather; and in some other respects.*

* The author of the Daśa-nirṇaya states the succession differently, viz.: 'First the maternal uncle; then the maternal uncle's son; next the maternal grandfather; after him,
Amidst this disagreement of authors, it is considered proper to follow the order of Sri-krishna's Dāya-krama-sangraha, making, however, the distinction of the whole and the half blood among the descendants of the paternal grandfather and great-grandfather, as made in his commentary on the Dāya-bhāga, and in the Digest of Jagan-nātha. This is done in pursuance of the dictum of Jānyavākya:—"If two texts of law differ (from each other,) reason, (or that which best supports it,) must in practice prevail."* The Dāya-krama-sangraha is—to use the words of Mr. Colebrooke, the highest European authority on points of Hindu law—a good compendium of the law of inheritance according to Jīmāta-rādhana's text, and has been preferably followed not only by the lawyers of this country, but also by the European scholars who have translated or written treatises on Hindu law. Bābā Praśanna-kumār Thākur has, in his "Table of succession according to Hindu law of Bengal," adopted the order of the Dāya-krama-sangraha. And in his little treatise entitled "The heritable right of Bandhus according to the western school"—he has expressed the same opinion. Mr. Colebrooke in his translation of the Dāya-bhāga, after showing discrepancies in the authorities current in Bengal, remarks: "Amidst the disagreement of authors, I should be inclined to give the preference to the authority of Sri-krishna's Dāya-krama-sangraha; because the order of succession on the mother's side, as there stated, follows the analogy of the rule of inheritance on the father's side."† Sir William Macnaghten, in his book on Hindu law says: "The above cited four authorities are of the greatest weight in the province of Bengal; and where they differ, reliance may with safety be placed on the Dāya-krama-sangraha of Sri-krishna."‡ Sir Thomas Strange, in his Elements of Hindu law, quotes the above remark of Mr. Colebrooke and acquiesces therein.§ And Mr. Elberling has followed only the order of Dāya-krama-sangraha, saying: "In the following pages we shall therefore state the order of succession of Sri-krishna in the Dāya-krama-sangraha."¶

---

§ Vol. II. Appendix to Ch. VII. p. 261.  ¶ Kilb. In. p. 79.
It is, however, to be remarked that it has been supposed by some that the succession of the sons of the late owner’s brother’s daughter, father’s brother’s daughter and grandfather’s brother’s daughter, was not originally recognised in the Dāya-krama-sangraha, but was subsequently inserted or interpolated by some pandits; and the reason assigned for such alleged interpolation is, that some copies of the work did not contain the passages declaring the succession of those relations. To this it may be replied that the passages in question are in the printed copies of all the editions of the Dāya-krama-sangraha, as well as in Mr. Wynche’s translation thereof. In Sir William Macnaghten’s and Sir Thomas Strange’s valuable works on Hindu law also the above mentioned relations are mentioned as heirs according to the Dāya-krama-sangraha. Mr. Elberling too, who has exclusively adopted the order of succession according to the Dāya-krama-sangraha, has named those relations as heirs recognised in that work. Bābā Prasanna-kumār Thākur in his two treatises, published a short time ago, has, upon the authority of the Dāya-krama-sangraha, recognised the said relations as heirs. Had there been the least suspicion of interpolation, those eminent scholars, who wrote their works after due inquiry and research, would have rejected the passages in question, or at least, made remarks upon them as of doubtful authenticity instead of silently citing them as genuine passages of the Dāya-krama-sangraha; and that acute logician, Jagan-nātha, who was so fond of sophistry and finding fault with others, would not have remained silent on the point in question; but on the contrary he has recognised the succession of the son of a brother’s daughter expressly by the mention of him, and that of the other two impliedly by the use of the expression “and so forth, claim succession in the order of proximity,” and has added the succession of the sons of a son’s daughter, grandson’s daughter and nephew’s daughter, assigning the same reason for their succession (namely, the conferring of benefits by the oblation of funeral cakes) as has been given by Śrī-krishna. Hence it is absurd to entertain the least suspicion of interpolation. It might be that the passages in question were omitted in some of the manuscript copies possessed by certain pandits whose books are often erroneous and incorrect, but that is no reason for considering the passages in question as interpolations in the face of all those valid proofs of their genuineness.

But even if it be granted for argument's sake that the passages in question were not originally in the book, yet when they have been recognised to be genuine by, and received corroboration from, Jégen-nátha, and the learned translator of his Digest, Mr. Colebrooke, who has translated the above passages without the least exception thereto, and lastly by and from Sir William Macnaghten and the other authors of eminence as above mentioned, then they can no longer be rejected, but should be respected as authoritative. — See the remarks on the following decisions passed against the succession of the above mentioned relations. — Hence, according to the Déva-krama-samgraha, —

Vyavastha. 97. In default of the father's daughter's son, the brother's daughter's son should succeed.*

Reason. For he presents two oblation-cakes in which the deceased owner partakes,—namely, to his (the owner's) father and paternal grandfather.*

Remarks. The succession, however, of this relation, and that of the paternal uncle's daughter's son, and grand-father's brother's daughter's son has, of late, been disowned by the Sudder and High Courts. Some of the decisions against their succession, (and consequently against the principle laid down by the highest modern authorities on the subject in question) are as follows: —

No.——402 of 1861.

Guru-gobinda Choudhuri versus Hari-mádho Roy.

Cases against the vyavas—this Nos. 97, 106, 111.

I. This was a suit to recover land. The parties were Hindus. Each claimed the property in question as heir; and each traced his descent through a common ancestor, Hari-jíban Cháki. The plaintiff was the great-grandson of Hari-jíban Cháki; his father being a son's son. The defendant was the grandson, being the son of a daughter† of Hari-jíban Cháki. The Judge decided in favor of the title of the plaintiff. The defendant appealed to this court. And thereupon the question arose whether, according to the law regulating descent among the Hindus, the son of a daughter or the son of a son's son was to be preferred. By the court. — We have carefully considered this case, because it is necessary not only to weigh the authority of

† Sic in orig.
ng authors, who give lists of the orders of succession in which
occurs, but also to try to discover, if possible, the principles
ing to which the rules regulating succession among the Hindoos
d. This is rendered especially necessary by the circumstance
Judge has adopted a rule contrary to that laid down in the
which has appeared upon this subject in the English language.
ing the lists of the Dāya-krama-sangraha and Dāya-bhāga,
the main difference (up to the point which concerns the pres-
se) to be, that in each generation the Dāya-krama-sangraha
the right to succession of the brother's daughter's son, while
bāga entirely passes over relations in that degree. Thus
bāga-sangraha places in their respective orders among
s, the brother's daughter's son, father's brother's daughter's
grandfather's brother's daughter's son: while the Dāya-bhāga,
 generation, stops at the sister's son, and omits the three re-
above mentioned. There is, therefore, a systematic variance.
Fendant in this suit is one degree more remote than the plain-
it occurred to us that a convenient means of ascertaining the de
would be to discover if there were any cases of a nearer
of kindred, namely, the brother's daughter's son having suc-
, since it seemed probable that such instances should have fre-
y occurred, if he were entitled to succeed. We accordingly
 time for the pleader of the appellant to search for such cases.
ld find two only. These cases are in the Persian, they do not
 ever to have been noticed and translated, and we cannot
them as authorities entitled to much weight, certainly not as
precedents. We have not therefore any very distinct autho-
guide us to a decision upon this point, and must have recourse
principle for its elucidation. Now when we look at the Hindu
, we find that the recognition of succession through females
exceptional. The Hindu law, like that of Ancient Rome, in
lation of descent, is agnostic. The succession of the daugh-
ter's son is an anomaly. Indeed, the orthodox Benares
does not, like the Bengal School, admit the father's daughter's
, i.e. the sister's son, and corresponding relations in the ascen-
. Seeing then that the authorities of the Bengal School differ,
le some authorities are in favor of the omission of a descent
a females related in a remote degree; others exclude the descen-
dants through females related in a near degree of kindred, we think that the *prima facie* presumption is against the person claiming through a female. Most relations through females are excluded. It is for the person claiming through a female, to show either an overwhelming preponderance of authority or established practice in his favor. This the applicants in the present case have, in our opinion, failed to do. We, therefore, think that their claim has not been established; and we confirm the decree of the lower court, *Appeal dismissed.*


**Case No. 457 of 1864.**

*Churá-maní Bose and another (Defendants) Appellants versus Prasanna-kumár Mitter (Plaintiff) Respondent.*

II. According to Hindoo law, a brother's daughter's son is no heir; but considering the unsettled state of the law on this point till recently, the plaintiff was declared entitled to a decree against a party holding under no title whatever, on proof of the plaintiff's father (a brother's daughter's son) and the plaintiff having *de facto* succeeded and held for a long period.

Plaintiff having failed as an intervener under Section 77. Act X. of 1859 brings a suit for declaration of his right to a share in a certain estate, alleging that his father was the brother's daughter's son of Shambhu-náth, the original owner, and succeeded to the estate. The Defendants hold as purchasers from Shambhu-náth. The lower appellate court finding defendants' alleged purchase not proved, and considering plaintiff's father, and after him plaintiff, to have been heirs of Shambhu-náth, decreed the claim. With reference to recent decisions of this court, by which it is established that a brother's daughter's son is no heir, the decision of the lower appellate Court is bad in law. But seeing that this question of law has been till recently very unsettled, every indulgence must be given to plaintiff as regards the form of plaint, and if it be proved that plaintiff's father and plaintiff have *de facto* succeeded and held for a long period, we think that they will be entitled to a decree against a party holding under no valid title whatever, that in fact a holding for a certain period will give them for practical purposes a sufficient title. We, therefore, remand the case for trial of the question, whether plaintiff or defendants held possession up to the time of the summary order under
Act X. of 1859, Sect. 77. If, as plaintiff alleges, from a long period of more than twelve years up to that period he has had possession, he will have a decree for the property. If, on the other hand, possession during that time has been with defendants, the decree will be in their favor.—The 17th of August, 1864. H. C. A. Sutherland's Weekly Reports. Vol. I. page 43.

Remarks:

I feel it my duty as the writer of a Digest of Hindu law, to remark, though with due difference, that the Honorable Judges who passed the first of the above two decisions, seem to have referred on the occasion to only the Dáya-bhága and Dáya-krama-sangraha, and not to any other work of authority, nor do they appear to have seen the conclusions come to by the European authorities respecting succession and non-succession of the sons of the daughters of one’s brother, father's brother and grandfather's brother; otherwise, I am inclined to suppose, they would not, and could not, have passed such a decision in the face of the principle laid down by Mr. Henry Colebrooke and Sir William Macnaghten the safest guides of those who have to administer Justice according to Hindu law without a thorough knowledge of the same. Although every Judge is not expected to be an adept in Hindu law like Colebrooke or Macnaghten, yet it is not too much to expect that he should know the conclusions arrived at, and principles laid down, by those eminent lawyers after many years labor and research. In the decision in question the learned Judges observe:—“We have carefully considered this case, because it is necessary not only to weigh the opposing authors, who give lists of the orders of succession in which variance occurs, but also discover, if possible, the principles according to which the rules regulating succession among the Hindoos proceed.” After this grave opening, they only collate the order of succession as contained in the Dáya-bhága with that in the Dáya-krama-sangraha, and disallow the heritable right of the sons of the daughters of the deceased's brother, paternal uncle and grand-uncle though recognised in the latter authority, simply because the same is not to be found in the Dáya-bhága. Here I beg to observe, that the Dáya-bhága is nothing but the ground-work of the Bengal doctrine. Being concise and abstruse, the Dáya-bhága, without its commentaries, (especially the celebrated commentary by Srí-krishna which has illustrated
the text by expressing what was implied by the terms ‘ādi’ (&q.) and ‘anta’ (as far as,) making distinction between the relations of the whole and half blood, giving preference to those of the whole blood, and supplying its omissions and making up its deficiencies) would have remained a work insufficient in many respects.—The following extracts from Bābu Prasanna-kumār Thākur’s little treatise entitled “The heritable right of Bundhoos according to the western school,” will at once convince that the Dāya-bhāga by itself should not be taken as a guide by modern Judges:—“In the original treatise (Dāya-bhāga,) a list of 34 heirs is given. The eminent commentator of the Dāya-bhāga, Sri-krishṇa Tarkālankāra, who is also the author of an original treatise entitled Dāya-krama-saṅgraha, adds three persons to the list of heirs, namely, the maternal grandfather, maternal uncle’s son, and maternal uncle’s grandson. In the Dāya-krama-saṅgraha, the same author enumerates 17 additional heirs, and the Vivāda-bhāngārṇava adds 25 persons to the list of heirs. Thus Sri-krishṇa Tarkālankāra, the commentator of the Dāya-bhāga and the author of the Dāya-krama-saṅgraha, as well as the author of the Vivāda-bhāngārṇava supply the omission of heirs made in the original treatise. If the list of heirs were limited according to the Dāya-bhāga, 31 thirty-one persons would be cut off from the right of inheritance, although their heritable right has been admitted by these authors and recorded in their respective works. It is not necessary to show in detail the consanguinity or affinity of the above mentioned persons, suffice it to say that the unenumerated 31 persons have been mentioned by the commentator Sri-krishṇa and in the Dāya-krama-saṅgraha, as well as in the Vivāda-bhāngārṇava, as heirs to the estate of the owner. Surely there are no modern Pāṇḍits of such superior pretensions as to contradict the opinions of the writers above alluded to. Hence, it is established, that the heirs enumerated in the original treatises, such as the Dāya-bhāga and the Mitākṣharā, should not be taken exclusively for the guidance of modern Judges, who are not acquainted with the Sanskrit or with the original works, and whose knowledge is entirely derived from translations.”

The predecessors of the learned Judges above alluded to have, according to the unquestionable authority of Raghunandana and Sri-krishṇa, recognised, as cases occurred before them, the heritable right of many of the relations enumerated in the orders of succession contained in the
VYAVASTHÁ-DARPANA.

Dāya-tattva, and Śrī-krishṇa’s works. Had they decided cases in strict accordance with Jīmētā-vāhana’s Dāya-bhāga rejecting the expositions of Rāghu-nandana and Śrī-krishṇa, the maternal grandfather would have been excluded by the maternal uncle, and the great great grandfather, his father and grandfather by their respective descendants, notwithstanding the latter claimed through their respective ancestors; the relations of the whole blood would have no preference over those of the half blood; and many other relations who have succeeded as heirs at law, would have been deprived of their heritable rights. The fact is, that Jīmētā-vāhana has recognised the heritable right of the son of one’s own daughter, father’s daughter and grandfather’s daughter on the ground of spiritual benefits being conferred by them;—thus he says: “On failure of heirs, of the father down to the great grandson, it must be understood, that the succession devolves on the father’s daughter’s son (in preference to the uncle;) in like manner as it descends to the owner’s daughter’s son (in preference to the brother.) The succession of the grandfather’s lineal descendants, including the daughter’s son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text,—‘for even the son of a daughter delivers him in the next world, like the son of a son,’—is equally applicable, and his father’s or grandfather’s daughter’s son, like his own daughter’s son, transports his manes over the abyss, by offering oblations of which he may partake. Accordingly Manu has not separately propounded their right of inheritance: for they are comprehended under the two passages, ‘to three must libations of water be made, &c. and ‘to the nearest kinsman (Sap藐a) the inheritance next belongs.” (See ante, p. 224.) In the Dāya-
krāma-sangraha Śrī-krishṇa also has upon the same ground (of spiritual benefits conferred by the presentation of oblation-cakes) as assigned by Jīmētā-vāhana, added three other daughters’ sons (viz. the sons of the brother’s daughter, paternal uncle’s daughter, and paternal grand-uncle’s daughter,) and there is no reason why these (who are recognised by Śrī-krishṇa and are comprehended in the very texts of Manu above cited) should be excluded, notwithstanding they confer the same amount of benefit as two of the three daughters’ sons (viz. the father’s daughter’s son, and grandfather’s daughter’s son) mentioned as heirs by Jīmētā-vāhana. In other words: the deceased’s brother’s daughter’s son equally with his father’s daughter’s son offers the
the text by expressing what was implied by the terms ‘ādi’ (&c.) and ‘anta’ (as far as,) making distinction between the relations of the whole and half blood, giving preference to those of the whole blood, and supplying its omissions and making up its deficiencies) would have remained a work insufficient in many respects.—The following extracts from Bābu Prasanna-kumār Thākur’s little treatise entitled “The heritable right of Bundhoos according to the western school,” will at once convince that the Dāya-bhāga by itself should not be taken as a guide by modern Judges:—“In the original treatise (Dāya-bhāga,) a list of 34 heirs is given. The eminent commentator of the Dāya-bhāga, Śrī-kṛishṇa Tarkālakāra, who is also the author of an original treatise entitled Dāya-krama-saṅgraha, adds three persons to the list of heirs, namely, the maternal grandfather, maternal uncle’s son, and maternal uncle’s grandson. In the Dāya-krama-saṅgraha, the same author enumerates 17 additional heirs, and the Viśāda-bhāngōrama adds 25 persons to the list of heirs. Thus Śrī-kṛishṇa Tarkālakāra, the commentator of the Dāya-bhāga and the author of the Dāya-krama-saṅgraha, as well as the author of the Viśāda-bhāngōrama supply the omission of heirs made in the original treatise. If the list of heirs were limited according to the Dāya-bhāga, 31 thirty-one persons would be cut off from the right of inheritance, although their heritable right has been admitted by these authors and recorded in their respective works. It is not necessary to show in detail the consanguinity or affinity of the above mentioned persons, suffice it to say that the unenumerated 31 persons have been mentioned by the commentator Śrī-kṛishṇa and in the Dāya-krama-saṅgraha, as well as in the Viśāda-bhāngōrama, as heirs to the estate of the owner. Surely there are no modern Pāṇḍits of such superior pretensions as to contradict the opinions of the writers above alluded to. Hence, it is established, that the heirs enumerated in the original treatises, such as the Dāya-bhāga and the Mitāksha, should not be taken exclusively for the guidance of modern Judges, who are not acquainted with the Sanskrit or with the original works, and whose knowledge is entirely derived from translations.”

The predecessors of the learned Judges above alluded to have, according to the unquestionable authority of Rāghu-nandana and Śrī-kṛishṇa, recognised, as cases occurred before them, the heritable right of many of the relations enumerated in the orders of succession contained in the
Dáya-tattva, and Srī-krishṇa's works. Had they decided cases in
strict accordance with Jímáta-váhana's Dáya-bhága rejecting the ex-
positions of Rághu-nandana and Srī-krishṇa, the maternal grandfa-
threr would have been excluded by the maternal uncle, and the great
great grandfather, his father and grandfather by their respective descendants,
notwithstanding the latter claimed through their respective ancestors;
the relations of the whole blood would have no preference over those of
the half blood; and many other relations who have succeeded as heirs
at law, would have been deprived of their heritable rights. The fact
is, that Jímáta-váhana has recognised the heritable right of the son
of one's own daughter, father's daughter and grandfather's daughter
on the ground of spiritual benefits being conferred by them;—thus he
says: “On failure of heirs, of the father down to the great grandson,
it must be understood, that the succession devolves on the father's
daughter's son (in preference to the uncle;) in like manner as it
descends to the owner's daughter's son (in preference to the brother.)
The succession of the grandfather's lineal descendants, including
the daughter's son, must be understood in a similar manner, accord-
ing to the proximity of the funeral offering: since the reason stated
in the text,—for even the son of a daughter delivers him in the next
world, like the son of a son,—is equally applicable, and his father's
or grandfather's daughter's son, like his own daughter's son, trans-
ports his manes over the abyss, by offering oblations of which he may
partake. Accordingly Manu has not separately propounded their right
of inheritance: for they are comprehended under the two passages,
'to three must libations of water be made, &c. and 'to the nearest kinsman
(Sepiṣda) the inheritance next belongs.” (See ante, p. 224.) In the Dáya-
krama-saṅgraha Srī-krishṇa also has upon the same ground (of spiritual)
benefits conferred by the presentation of oblation-cakes) as assigned by
Jímáta-váhana, added three other daughters' sons (viz. the sons of
the brother's daughter, paternal uncle's daughter, and paternal grand-
uncle's daughter,) and there is no reason why these (who are recognised
by Srī-krishṇa and are comprehended in the very texts of Manu
above cited) should be excluded, notwithstanding they confer the same
amount of benefit as two of the three daughters' sons (viz. the
father's daughter's son, and grandfather's daughter's son) mentioned
as heirs by Jímáta-váhana. In other words: the deceased's brother's
daughter's son equally with his father's daughter's son offers the

36
Pórvāṇa Shrāddha or double set of periodical oblation-cakes, (see ante, p. 20. Note) to the deceased's two ancestors viz. grandfather and great grandfather in which the deceased participates,* and his uncle's daughter's son equally with the (deceased's) grandfather's daughter's son offers those oblation-cakes to his grandfather and great grandfather in which the deceased participates,* and the deceased's grand-uncle's daughter's son equally with the great grandfather's daughter's son presents an oblation-cake to this ancestor in which the deceased participates.* Why then should the sons of the daughters of the deceased's father, grandfather and great grandfather (recognised by Jimāta-vāhana,) be held entitled to the heritable right, which (to use the words of our law-giver, Manu,) is the remuneration for the offering of the oblation-cakes and so forth, and the sons of the daughter of one's brother, father's brother and grandfather's brother (recognised by Śrī-krishṇa) be excluded from inheritance, notwithstanding they confer equal benefits and are within the three degrees of sapinda, and comprehended under the above texts of Manu, as well as those recognised by Jimāta-vāhana? Why I say, should such invidious and unreasonable distinction be made between the two sets of relations when they have equal claims, and when our law has expressly provided what is to be done where two texts may defer, or a text of law may appear inconsistent with reason?—Thus Jágyavalkya ordains: "If to texts of law differ, reason (or that which it best supports) must in practice prevail."† So also Vrihaspati:—"Decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of the law, there might be a failure of justice."‡ Now is it not reasonable that the additional daughters' sons recognised in the Dāya-krama-sangraha, should inherit just as those mentioned in the Dāya-bhāga when spiritual benefits conferred by both sets on the deceased (which are the cause of their heritable right,) are equal in every respect, and both are sapinda relations comprehended under the two texts of Manu above cited, on which the author of the Dāya-bhāga founds the claims of the daughters' sons mentioned by him? And does not reason as well as justice require that either those daughters' sons (mentioned in the Dāya-bhāga) who confer benefits

* See the succession of those relations and of the sakulas in this Book.
‡ See Macn. H. L. Vol. II. p. 102.
equally with the daughters’ sons added in the Dāya-krama-sangraha should be excluded, or the latter should succeed to the deceased’s estate as well as the former? It may, however, be asked why then the heritable right of the sons of the deceased’s son’s daughter, nephew’s daughter and grandson’s daughter, proposed by Jagan-nātha, should not be recognised as heirs? The answer is, I do not see why they should not, when they also are comprehended under the above texts of Manu, and confer the same degree of spiritual benefit as two of those recognised by Jmāta-vāhana, and all the three recognised by Śrī-krishṇa. The only reason seems to be, that Jagan-nātha, does not enjoy the same veneration as Śrī-krishṇa.—Mr. Colebrooke seeing that Jagan-nātha was much respected by the Madras pandits, thus writes to Sir Thomas Strange: “They make great use, I perceive, of the authority of Jagān-nātha, the compiler of the Digest, which was translated by me. We have not here the same veneration for him, when he speaks in his own name, or steps beyond the strict limits of a compiler’s duty.” (See Str. H. L. Vol. II. pp. 157, 151.) While on the other hand, whatever has been added by Śrī-krishṇa in his commentary by way of supplying omissions or making up deficiencies of the Dāya-bhāga, the same has been respected by native as well as European writers of works on Hindu law equally with, if not preferentially to, the texts of the Dāya-bhāga; and his Dāya-krama-sangraha is held by them as preferable to all other authorities including the Dāya-bhāga. Thus Mr. Colebrooke finding discrepancies in the order of succession in the several books current in Bengal, observes:—“Amidst this disagreement of authors, I should be inclined to give the preference to the authority of Śrī-krishṇa’s Dāya-krama-sangraha, because, the order of succession on the mother’s side as there stated, follows the analogy of the rule of inheritance on the father’s side.” (See ante, p. 274.) Hence it is clear that he disapproved the Dāya-bhāga, and preferred the Dāya-krama-sangraha wherever they differed from each other. Sir W. Macnaghten, who does not give the order of succession according to the Dāya-bhāga, but according to Śrī-krishṇa’s commentary on the Dāya-bhāga, his Dāya-krama-sangraha, the Viśdārṇa-setu and the Viśdā-bhangārṇava, remarks as follows: “The above cited four authorities are of the greatest weight in the province of Bengal, and where they differ, reliance may with safety be placed
grandfather and grandmother and their lineal male offspring down to the third generation including daughter's son; in their default, on the great grandfather and mother, and their male children as far as the great grandson and daughter's son; on failure of these three generations in the paternal line, the inheritance goes to the maternal line, and devolves successively on the maternal grandfather, great grandfather and great great grandfather, with their respective descendants down to the great grandson and daughter's son. Thus the succession of the daughter's sons is not an anomaly, but as regular as it can be, and the law is not agnostic as imagined to be. It was on account of the order of succession on the mother's side following the analogy of the rule of inheritance on the father's side that the Dāya-krama-sangraha was preferably adopted by that eminent Hindu lawyer, Mr. Henry Colebrooke, and this determination of his has been followed by all other modern authorities including Sir William Macnaghten.

The Honorable Judges further observe: "We have not any very distinct authority to guide us to a decision upon this point, and must have recourse to principle for its elucidation."—I submit that the above determination of Mr. Colebrooke's, which is in strict accordance with the ordinances of the legislators—Jányavalkya and Vrihas-patī as above cited, and which has been followed by all the subsequent authorities without exception, is certainly a very distinct authority to guide them to a decision upon the point. They say, they must have recourse to principle, but I do not see any principle in the Dāya-bhāga in which they looked for one with respect to the point in question, unless deficiency or omission be deemed to be a principle in the negative. Whatever opinions have been recorded, determinations or conclusions come to, and principles laid down, by that eminent lawyer—whether on collation or perusal of the Sanscrit books or otherwise,—all that have been adopted and respected as law by the subsequent authors of works on Hindu law,* and followed by the Judges of the highest courts in India as well as of the Privy Council in England: none of them has yet been disrespected or rejected by any of them, excepting

* After alluding to the opinions of Paṇḍits with remarks upon them, which are termed response prudentis, and which constitute his second volume, Sir Thomas Strange says: "'of the magnitude of the service thus rendered,—to every one in the slightest degree occupied in Hindu jurisprudence—it is sufficient to have said of the "remarks" to which it applies, that they are of Mr. Colebrooke's."—Pref. p. XXII.
by the said Honorable Judges on the point in question. Will was unknown to Hindu law; but Mr. Colebrooke considering the then custom and usage of the Hindoos of this country determined that it should be maintained in Bengal; and accordingly it was made current in this province.* Now if the Judges are not warranted to upset or reject a Hindoo will, although it is not recognised in the Dāya-bhāga, they were not also warranted to pass the judgment in question in opposition to the principle laid down by Mr. Colebrooke and adopted by all the subsequent authorities, that is to supersede all the modern authorities and adhere to the oldest authority of the Bengal doctrine, namely, the Dāya-bhāga, which is as already observed the mere ground-work of the doctrine of this country. In adhering to the Dāya-bhāga alone, and paying no attention to, or rejecting the Vyavasthās of, the subsequent works which supplied the omission and made up the deficiencies of the Dāya-bhāga, the Honorable Judges have, I humbly submit, done almost the same thing, as if they had adhered to, and followed, exclusively the Regulations of 1793 inspite of the additions thereto and amendments thereof made in the subsequent Regulations and Acts. In conclusion it is trusted that the executive authorites, intrusted as they are with the administration of the law to so many millions of people, would not run the risk of forming their independent opinions by merely consulting on such occasions one or two translations in opposition to the conclusions arrived at after years of study and research by those eminent scholars whose knowledge of the law, derived for the most part from its very fountain head, the Sanscrit, in which (to use the words of another eminent scholar, Sir William Jones,) it is locked up, was, far superior, but would consider it the safest to follow their opinion which is laid down purposely for the safe guidance of those who have not so thoroughly studied the law as they did.—

The last decision does not require to be commented upon, as in that the example set in the first has only been followed without the least inquiry as to its accuracy.

* Sir Francis Macnaghten in speaking of Hindoo wills, remarks: "Upon the right of a Hindoo to dispose of his property by will I have seen the opinion of Mr. Colebrookes, and I need not add that there is not any man whose opinions may justly command a greater degree of difference."—Considerations on the Hindoo law, page 317.
On the Succession of the Paternal Grandfather, Grandmother, and Their Descendants.

Vyavastha.

98. Failing the brother’s daughter’s son, the succession devolves on the paternal grandfather.*

Authority with reason.

For, as the father is entitled to succeed on failure of the late owner’s daughter’s son, so by the rule of analogy the succession devolves on the grandfather in default of heirs down to the father’s daughter’s son; and because he (the grandfather) presents to the owner’s great grandfather (one) oblation-cake in which the deceased owner participates.*

Vyavastha.

99. In default of the paternal grandfather, the paternal grandmother inherits.*

Authority with reason.

For in conformity with Manu’s text:—“Of a son dying childless the mother shall take the estate, and the mother being also dead, the paternal grandmother shall take the heritage”—as the mother succeeds on the death of the father, so by the rule of analogy the succession devolves on the paternal grandmother in default of the paternal grandfather.*

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. A minor dies, leaving his sister, his paternal uncles and his father’s mother. In this case, according to law, which of these individuals is entitled to succeed him by right of inheritance?

R. His paternal grandmother is exclusively entitled to the succession. The sister and the uncle are excluded by her.

To this effect is the text of Manu cited in the Dāya-bhāga and other authorities: “Of a son dying childless (and leaving no widow,) the mother shall take the estate; and the mother also being dead, the father’s mother shall take the heritage.”†—Macn. H. L. Vol. II. Ch. I. Sect. 4, Case 4, (p. 64.)

* * * * *

† This is agreeable to the law of Bengal, according to the order adopted by Sri-Krishna in the Dāya-dharma-saṅgraha, which is universally admitted to be the most eminent authority in that province.—Macn. H. L, Vol. II. p. 64.
Q. An unmarried person, possessed of some immovable property, which has descended to him from his father and grandfather, died leaving an adult sister, whose husband is living; a paternal grandmother, and several paternal uncles him surviving. In this case, which of the claimants is entitled to inherit? Supposing the grandmother to have died before the other individuals specified in this case, which of the survivors is entitled to succeed to the property?

R. If any person, being in possession of certain ancestral immovable property, die, leaving a sister him surviving, whether she be a minor or an adult, and whether she have a husband living or be a widow, such sister cannot inherit. Her sons may legally inherit; but it appears from the question, in this case, that the sister is destitute of male issue; consequently the grandmother is entitled to the succession, and if she die before the other individuals mentioned in the question, then the succession should devolve on the paternal uncles. This opinion is consonant to the Dāya-bhāga, its commentary, the Dāya-krama-sangraha, Vivāda-bhāgārṇava, and other authorities.—Macn. H. L. Vol. II. Ch. I. Sect. VI. Case. 13, (pp. 97, 98.)

Case In the case of Srīmati Joy-maṇi Dāsī and others against Ajīmā-rām Ghose and Kulā-chánd Ghose, it seemed to be agreed that if Shambhu-chander, the son of Gangā-charan, by his wife Joyā Dāsī, (who died before her husband,) had died in the life time of his father, then Joy-maṇi the surviving wife of Gangā-charan would have been entitled to his estate; but Shambhu-chander having survived his father, it was held that his father’s estate vested in him, and that Joy-maṇi (not being his mother although a wife of his father) could not take from him (Shambhu-chander;) but that his father’s mother Caruṇā-moyi was his heir, and that Joy-maṇi has a right to maintenance out of her husband’s estate, and may follow it for the purpose of obtaining her right into the hands of Caruṇā-moyi.—Macn. Cons. H. L. pp. 64—68.

Vyāvasthā. 99. Failing the paternal grandmother, the succession devolves on the father’s own brother.*

VYAVASTHA-DARPANA.

100. In default of the father's own brother, the father's half brother is heir.*

For they present to the paternal grandfather and great-grandfather of the late owner two oblation-cakes in which the owner participates.*

Admitted legal opinion approved of by Sir William Macnaghten.

Q. A person died, leaving his paternal grandmother, two paternal uncles, and an uterine sister, about 25 years of age, whose husband is aged about 35, by whom she has two daughters, the one five and the other three years old; and there is a probability of her having male issue. In this case, which of the abovenamed individuals is entitled to inherit the estate of the deceased? If the probability of the sister's bearing male issue be a bar to the succession of the other claimants, and the grandmother be dead; in this case, whether should the management of the estate be confided, in the mean time, to the paternal uncles, or to the sister? Supposing the sister to have no male issue, and that the possibility of her having any is extinct; in this case, who is entitled to the succession?

R. Supposing the deceased to have been survived by his paternal grandmother, two paternal uncles, and an uterine sister, who is likely to have male issue, then, on the death of the grandmother, the uncles who confer benefit to the deceased on offering the funeral cake to his grandfather and great grandfather are entitled to the property left by him; and if the sister have no male issue, they (the uncles) are the successors, the right of inheritance being then unqualified. Consequently the management should be confided to them, and not to the sister, for she cannot by law be considered as heir to her brother. But whenever a son may be born to her, he will be entitled to succeed to the property.† This opinion is conformable to the Dāya-bhāga, Dāya-krama-sangraha, the Commentary on the Dāya-bhāga and other authorities.

† This vyavasthā is correct except the last part, viz. 'But whenever a son be born to her he will be entitled to succeed to the property.' See ante, p. 246.
The Dāya-bhāga:—"The paternal uncle is indeed a giver of obligations to the grandfather and great-grandfather of the proprietor."

The Dāya-krama-sangraha:—"Failing the paternal grandmother, the uncle succeeds; for he presents (two) oblations to the paternal grandfather and great grandfather of the deceased owner."

The commentary on the Dāya-bhāga:—"The sister is excluded from the succession, because she is no giver of oblations at periodical obsequies, being disqualified by sex."

"They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of the hereditary maintenance is censured."—Calcutta Court of Appeal, February 14th, 1827. Macn. H. L. Vol. II. Ch. I. Sect. 6, Case 14. pp. 98, 99.

Vyavastha: 101. In default of the father's half brother, succession devolves on the son of the father's whole brother.*

Vyavastha: 102. Failing him, it devolves on the son of the father's half brother.*

Reason. For they present to the (deceased) owner's grandfather and great grandfather two oblation-cakes in which the owner participates.—See Dā. kra. Sang. p. 20.

Bimalá Debí versus Gokul-náth and Nabá-kishor.

Case bearing on the vyavastha No. 101. The Zemindaree of Rájá Hari-náth had gone to the eldest sons according to the usage of the family successively, but after the great grandson male issue failing, it went according to the Hindu law to his widow; on whose death, the sons of the brother of her husband's father took possession. At the suit of the grandson of the second son of Hari-náth, held that at the demise of the widow of the grandson of the eldest son of Hari-náth, not the plaintiff, but the above parties, as nearest relations, had right to succeed.—2nd January, 1800. S. D. A. R. Vol. I. pp. 29—31.

VYAVASTHA-DARPANA.

Vyavastha. 103. In default of the son of the father's half brother, the right devolves on the grandson of the father's whole brother.*

Vyavastha. 104. After him, on the grandson of his half brother.*

For they also offer to the (deceased) owner's grandfather (one) oblation-cake in which the owner participates.—See Đā. kra. sang. p. 21.

Vyavastha. 105. In default of him (the paternal uncle's grandson) the succession devolves on the grandfather's daughter's son.†

Reason. Because he presents to the paternal grandfather and great grandfather of the late owner oblation-cakes, in which the deceased owner participates.—Đā. kra. sang. p. 21.

Although the grandfather's daughter's son by presenting two oblation-cakes in which the owner participates confers greater benefit than the uncle's grandson, who presents but one oblation-cake in which the owner participates, yet nevertheless the right of succession devolves (in the first instance) on the uncle's grandson, because he has stronger claim by virtue of his relationship to the deceased owner in the degree termed (sagotra) 'sapinda.'—Vide Đā. Kra. Sang. pp. 21, 22.

Vyavastha. 106. In default of the paternal grandfather's daughter's son, the paternal uncle's daughter's son succeeds.‡


In the succession of the paternal grandfather's son, grandson, and great grandson, the distinction must be admitted as before, in respect of their relation to the (late proprietor's) father by the whole or half blood, because the paternal grandmother shares the funeral cakes offered by her descendants, and the wife of a paternal grandfather does not share in the oblations presented by the descendants of another wife of her husband: but no distinction is taken in the case of daughter's son; because the maternal grandmother does not share in the oblation-cake offered by her daughter's son.—Coleb. Dig. Vol. III. pp. 428, 429.


Because he presents two oblation-cakes in which the deceased owner participates, namely, the owner's paternal grandfather and great grandfather.—*Dâ. kra. sang.* p. 22.

Admitted legal opinion selected and approved of by
Sir William Macnaghten.

Q. A (a Hindu) died leaving a widow and a father. Subsequently the father died, leaving a widow (B), not the mother of A, a minor son (C), and a sister's son (D). Afterwards C died childless. Subsequently to C's death, the widow (B) took possession of the property left by the father, and executed a will assigning over the entire property to her husband's sister's son (D), and died without putting the legatees into possession of the property willed away. In this case, is the will, according to the law as current in Mithila and Bengal, valid and binding? On the other hand, supposing no will to have been executed, does the property in question go to the sister's son of A's father, or to his widow, by right of inheritance?

R. Supposing A to have died, leaving a widow and father, and the father to have died subsequently, leaving a widow (B), being the step-mother of the deceased A, a minor son (C), and a sister's son (D), and the minor C to have died childless, and subsequently to this, the widow of the father to have enjoyed the property in question, to have assigned it to her husband's sister's son (D) by the execution of a will in his favour, but to have died without putting D into possession of the property therein specified; in this case, according to the law as current in Mithila and Bengal, the will cannot be held to be valid and binding. And the heirs who are entitled to succeed to the property may be thus enumerated. The widow of the first deceased, (A,), who died before his father, is, according to the law as current in Mithila and Bengal, competent to inherit her husband's property, supposing it to have been divided and separated from that of his co-heirs. If the property was held in joint tenancy, his widow, according to the law as prevalent in Bengal, is entitled to succeed to that portion which was her husband's share; but, according to the law as current in Mithila, she would not be entitled to succeed even to this, for the law-expounders of that School
declare, that the widow's right of succession depends on the partition of the joint stock, partition being, according to them, the sole cause of creating individual proprietary right. Therefore of A's property, so much as was not his vibhatā or divided, and a-vādārāṇa or exclusive property, according to the law as current in Mithila, and so much as was not his individual proportion, or his share of the joint property, according to the law as current in Bengal, will on the death of the first deceased son, (A,) devolve entirely on his father, even though his widow was living. On the death of the father, the whole property to which he (the father) succeeded, should have devolved on his minor son (C.) At the death of such son leaving no child, his property should have devolved on his next heir, that is, according to the law as current in Mithila, in default of heirs from the widow down to gentiles, on his father's sister's son, he being ranked among the cognates; and not before: but according to the law as current in Bengal, in default of heirs from the widow down to the grandfather's grandson, the father's sister's son is entitled to the succession, he being the grandfather's daughter's son.

This opinion is conformable to the Vivāda-chintā-maṣi and other authorities, as current in Mithilā, as well as to the Dēya-bhāga and other law tracts, as prevalent in Bengal.

 Authorities :—

1. The passage of the Mahā-bhārata cited in the Vivāda-chintā-maṣi, Dēya-bhāga, and other authorities. (See ante, p. 48.)

2. "The term 'waste' means to give, sell, or make other alienation at pleasure."—Vivāda-chintā-maṣi.

3. The text of Visnū cited in the Vivāda-chintā-maṣi and other law tracts:—"The wealth of him who leaves no male issue, goes to his wife; on failure of her, to his daughter; failing her, to his mother; in her default, to the father, and so forth."

4. "This rule applies to the husband's divided property:"—Vivāda-chintā-maṣi.

5. "Therefore the doctrine of Jitendriya, who affirms the right of the wife to inherit the whole property of her husband, leaving no male issue, without attention to the circumstance of his being separated from his co-heirs or re-united with them, (for no such distinction is specified,) should be respected."—Dēya-bhāga.
6. "On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, and to his mother; as is declared by the following text of Jáñyavalkya: 'The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned his mother's cognate kindred. This must be understood to be the order of succession here intended.'—Viváda-chintá-mañi.

7. The following is a text of the Dáya-bhága:—"The succession of the grandfather's and great grandfather's lineal descendants, including the daughter's son, must be understood in a similar manner according to the proximity of the funeral offering."

8. In the case of non-partition, the text of Sankhya cited in the Viváda-chintá-mañi applies: "To the childless wives of brothers and of sons, strictly observing the conduct prescribed, their spiritual parent must allot mere food, and old garments which are not tattered."


**ON THE SUCCESSION OF THE PATERNAL GREAT GRANDFATHER, GREAT GRANDMOTHER, AND THEIR DESCENDANTS.**

Vyavastha: 107. Failing the paternal uncle's daughter's son the paternal great grandfather succeeds.*

Reason. Because the (late) owner participates in the oblation offered to the paternal great grandfather; and also because of the analogy above mentioned.—Dá. kra. sang. p. 22.

---

Vyavastha. 108. Failing him, the paternal great grandmother is entitled to succeed.*

Reason. Because she shares the oblation-cake offered by her great grandson. This observation of Jimáta-váhana and Rághu-nandana should be respected.—Coleb. Dig. Vol. III. p. 529.

Vyavastha. 109. If she be dead, the paternal grandfather’s own brother, his half brother, their sons and grandsons are successively heirs.†

Reason. For they offer to the owner’s paternal great grandfather an oblation-cake in which the owner participates.—See Dá. kra. sang. p. 22.


Case bearing on the vyavastha No. 109. At the decease of a widow who inherited her husband’s estate, the grandson of the brother of the husband’s grandfather, as collateral kinsman, is entitled to the estate, and he dying before the suit was decided, a decree was passed in favour of his daughters as his heirs.—14th March, 1803. S. D. A. R. Vol. I. p. 62. See ante, p. 69.

Vyavastha. 110. Next succeeds the paternal great grandfather’s daughter’s son.†

Reason. Since he presents an oblation, in which the deceased owner participates, namely, to the owner’s paternal great grandfather.—Dá. kra. sang. p. 23.


It must not be argued, that in the want of a positive text, the succession of the paternal great grandmother is forbidden by the general maxim: “wealth was conferred for the sake of defraying sacrifices; therefore, distribute it among honest persons, not among women, ignorant men, and such as neglect their duties.” A man should not affirm, of his own authority, that no such special ordinance exists; for the ocean of the law has not been traversed.—Coleb. Dig. Vol. III. p. 529.


Here again a distinction must be admitted in the succession of the paternal great grandfather’s son, son’s son, and grandson’s son according to their relation to the paternal grandfather by the whole or half blood; but not in the instance of his daughter’s son.—Coleb. Dig. Vol. III. p. 529.
VYAVASTHA-DARPANA.

Vyavastha. 111. Next the succession devolves on the paternal grandfather's brother's daughter's son.*

Authority With reason. For he presents an oblation in which the deceased owner participates, namely, to the owner's paternal great grandfather.—Dā. kru. sang. p. 23.

ON THE SUCCESSION OF THE MATERNAL GRANDFATHER AND THE REST.

To intimate that on failure of lineal descendants of the paternal great grandfather, down to the daughter's son, who might have presented oblations in which the deceased would participate, the maternal uncle shall inherit in consequence of the proximity of the oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, Jáṅyavalkya employs the term "cognates (bandhu)." But Manu indicated it only by a passage declaratory of succession according to the nearness of the oblation. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore, the property should devolve on the maternal uncle and the rest: for it is by means of wealth that a person becomes a giver of oblations.† Here also, as in the instance of father and paternal kinsmen, if the maternal grandfather be living, he is heir; on failure of him, the maternal uncle and other maternal kindred succeed in order.‡ Consequently,—

Vyavastha. 112. In default of the paternal grandfather's brother's daughter's son, the maternal grandfather (of the late owner) succeeds.§

Vyavastha. 113. In his default, the maternal uncle.§

114. Failing him, his son.§

† Dā. bhā. p. 376.
VYAVASTHA-DARPANA.

115. If he be dead, the grandson of the maternal uncle is heir.*

Authority. For these two texts of Manu—"To three must libration of water be given at their obsequies: for three is the oblation-cake ordained;" and—"to the nearest sapinda the inheritance next belongs,"—which declare that succession to the estate (of the deceased) is to take place according to the order of proximity of benefits conferred on the deceased owner, propound the right of the above-named to succeed; and the sole object of the introduction of the two texts above cited in a treatise on inheritance is to show that the right of succession to the estate occurs according to the order of benefits conferred on the deceased proprietor: otherwise the insertion of these texts in a treatise on inheritance would have been useless.—Da. kra. sang. p. 24.

116. In default of the maternal uncle's grandson, the maternal grandfather's daughter's son succeeds.*

" 117. Failing him, the maternal great grandfather.*

" 118. In default of him, his son (succeeds.*)

" 119. If he be dead, the maternal great grandfather's grandson.*

" 120. In his default, the maternal great grandfather's great grandson succeeds.*

" 121. Then succeeds the son of the daughter of the maternal great grandfather.*

" 122. In default of him, the maternal great great grandfather is heir.*

" 123. Failing him, his son.

" 124. In his default, the grandson of the maternal great great grandfather.*

" 125. If he be dead, the great grandson of the maternal great great grandfather (is heir.*)

126. Next succeeds the maternal great great grandfather’s daughter’s son.*

Admitted legal opinion selected and approved of by
Sir William Macnaghten.

Q. A widow of the Kshatriya tribe, who was in possession of her husband’s estate, died childless, leaving, as the only claimant to the property, her husband’s maternal uncle’s son. In this case, is the individual above alluded entitled to inherit the property left by the widow, by reason of there being no other natural heir or adopted son?

R. If the widow of the childless man in question died possessed of her husband’s estate, leaving her husband’s maternal uncle’s son, and there be no one of her husband’s heirs surviving down to the mother’s sister’s son, then, according to the series of heirs enumerated in the Mitaksharat and other authorities current in the western provinces, and if there be none surviving down to the maternal uncle, according to the series of heirs as enumerated in the Dāya-krama-sangraha of Sri-kriṣṇa Tarkalankara, Vivadārnava-setu, and Vivadā-bhangārṇava, which prevail in Bengal, and if there be none surviving down to the mother’s sister’s son, according to the series of heirs as enumerated by Sri-kriṣṇa Tarkalankara in his commentary on the Dāya-bhāga, then, agreeably to these three authorities, the entire property left by the deceased widow will devolve on her husband’s maternal uncle’s son, he being ranked among the Ṛṣi-ma-bandhu, or own cognate kindred, provided at her death she left no adopted son. This opinion is consonant to the Mitaksharat and other authorities as current in the western provinces, as well as to the Dāya-bhāga, the commentary by Sri-kriṣṇa Tarkalankara on the Dāya-bhāga, the Dāya-krama-sangraha, Vivadārnava-setu, Vivadā-bhangārṇava, and other law tracts as prevalent in Bengal.


† This is a mistake.—See the latter part of the Note at page 271.
 Authorities;—

1. The text of Jānynyavalkya cited in the above authorities See ante, page 23.

2. "On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother. (See ante, p. 295.) Here, by reason of near affinity, the cognate kindred of the deceased himself are his successors in the first instance. On failure of them, his father's cognate kindred; or if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended."—Mitāksharō.

3. "On failure of any lineal descendant of the paternal great grandfather, down to the daughter's son, who might present oblations in which the deceased would participate; to intimate that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, Jānynyavalkya employs the term "cognates (bandha.)"—Dāya-bhāga.

4. Failing him (the maternal grandfather,) the maternal uncle: (in default of him,) his son; and (on failure of him,) his grandson. In default of the maternal uncle's grandson, the maternal grandfather's daughter's son succeeds.

5. The succession devolves on the maternal uncle and the rest, who present oblations which the deceased was bound to offer. In default of these, the heritage goes to the son of the owner's maternal aunt; or failing him, it passes successively to the son and grandson of the maternal uncle. The commentary by Śrī-krishṇa Turkālenkāra on the Dāya-bhāga.*

Sudder Dewanny Adawlut, May 30th, 1826. Musummaaut MunnooBeebee versus Gokul-chund.—Macn. H. L. Vol. II. Ch. I. Sect. VI. case 12, (pp, 95—97.)

* This is a mistake.—See the latter part of the note at page 271.
CASE NO. 108 OF 1854.

Rāṇī Man-mahini mother and guardian of Roy Rādhā-ballab, minor, (Defendant,) Appellant versus Joy-náróyaṇ Bose, (Plaintiff,) Respondent.

Rājā Gour-ballab and Har-gobinda Ghose, (Third party,) petitioners.

CASE NO. 241 OF 1854.

Joy-náróyaṇ Bose, (Plaintiff,) Appellant versus Rāṇī Man-mahini, (Defendant,) Respondent.

ISSUE: —

Case bearing on the vyavastha No. 113.

Is the plaintiff in this case, with reference to the claims put forth by Har-gobinda Ghose, and Gour-ballab Roy, entitled as heir at law of the minor sons of Ishán-chander Roy to bring the present suit to set aside the adoption of Rādhā-ballab Roy, and for possession of the property which belonged to the sons of Ishán-chander Roy, but which is now in the possession of Rāṇī Man-mahini as guardian of her alleged adopted son?

If plaintiff be entitled to bring the present suit, then is the alleged permission to adopt proved, and if it be, is the adoption under it a good and valid adoption according to Hindu law?

If the adoption be not valid under Hindu law, then is the decree of the Court below, awarding to plaintiff possession of the real property with mesne profits and personal property according to his own valuation of it without costs, correct or not?

JUDGMENT: —

Considering the first point raised in the first issue, it is necessary to state the relation in which the plaintiff in this suit and the parties who, it is alleged, interfered with plaintiff’s right to bring the present action, stand to the minor sons of Roy Ishán-chander. The plaintiff is their maternal uncle; Har-gobinda Ghose is their paternal great grandfather’s brother’s daughter’s son, and Rājā Gour-ballab is their great great grandfather’s great great grandson; without entering upon the theory of the Hindu law of inheritance; which was so lucidly stated to us by Baboo Ramá-prasad Roy, but looking solely to the authorities on the subject, there seems to us to be no question but that in the event of the failure of the adoption set up by Rāṇī
the whole blood, his son by a woman of the same tribe, his grandson and great grandson: all these partaking of undivided oblations, are pronounced ‘Sapindas.’ Those who share divided oblations are called ‘Sakulyas.’ ‘Male issue of the body being left, the property must go to them. On failure of Sapindas, or near kindred, Sakulyas, or remote kinsmen, are heirs. If there be none, the preceptor, the pupil, or the priest, will take the inheritance. In default of all these, the king’ (has the eschat.)—Boudhávana. The meaning of the passage is this: since (the fourth person or the proprietor) enjoys the oblation-cakes presented to the father and the two next ancestors, as being the participator in the offerings at obsequies: and since the son and other descendants, to the number of three, present oblations to the deceased; and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middle most (of seven) who, while living, offered food to the manes of ancestors, and when dead, partook of the offerings made to them, became the object to which the oblations of his descendants were addressed in their life-time, and shares with them, when they deceased, the food which must be offered by the daughter’s son, and other (surviving descendants beyond the third degree.) Hence those (ancestors,) to whom he presented oblations, and those (descendants,) who present oblations to him, partake of an undivided offering in the form of (piśa) food at obsequies. Persons, who do partake of such offerings are Sa-pindas. But one distant in the fifth degree, neither gives an oblation to the fifth in ascent nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of the offerings made to him. Therefore three ancestors, from the grandfather’s grandfather upwards, and three descendants from the grandson’s grandson downwards, are denominated “Sakulyas,” as partaking of divided oblations, since they do not participate in the same offering. This relation of Sa-pindas, as well as that of Sakulyas has been propounded relatively to inheritance.* Thus Sakulya is of two kinds I.—descending, and II.—ascending. The descending Sakulya is the great grandson’s son and the rest down to the third degree in the descending line. The ascending Sakulya intends the great great grandfather, and other ancestors up to the third degree in the ascending line.†

The fourth person and the (two) rest share the lepa or the remains of the oblations wiped off with kushta grass; the father and the (two) rest share the oblation-cakes; the seventh person is the giver of oblations; the relation of Sarpinda, or men connected by the oblation-cake, extends therefore to the seventh person (or sixth degree of ascent or descent.) It should however be noticed that these are considered Sarpindas only in the case of impurity by reason of a kinsman's death; but in respect of inheritance, (the first) three are as Sarpindas (the other) three as Sakulyas.—See Coleb. Dig. Vol. III. p. 531.

Vyavastha. 128. Of the sakulyas, the son of the great grand son is first entitled to succeed.*

Reason. Because he offers the remains of the oblation-cake to the late proprietor, his father, and to his grandfather.—See Dā. Kra. Sang. p. 25.

Vyavastha. 129. Next the grandson of the great grandson.*

Reason. Because he offers the remains of the oblation-cake to the late proprietor, and to his father.*

Vyavastha. 130. After him, the great grandson of the great grandson.*

Reason. Because he offers the oblation-cake to the late proprietor.*

Vyavastha. 131. On failure of these, the Sakulyas, as far as the third degree in the ascending line, inherit in due order.*

Reason. Because the late proprietor shares the remains of the oblation-cake wiped off and offered to those ancestors.*

Vyavastha. 132. Their offspring also inherit in the order of proximity.*

Reason. Because they present oblation-cakes to the grandfather's grandfather and the two next ancestors who are partakers of the remainder of the oblations, which it belonged to the deceased owner to make.

"Their offspring inherit in the order of proximity, because they confer benefits by presenting the oblation-cake." From this declaration of Sri-Krishna what can be concluded is, that the paternal great grandfather and the two next ancestors, and only those of their issue who offer the oblation-cakes (and not the remains of the oblation) succeed in the order of proximity. And their succession in such order can be as follows:—first, the paternal great great grandfather; failing him, his son, grandson, great-grandson, and daughter's son, succeed in order; in their default, the paternal great grandfather's grandfather, his (the latter's) son, grandson, great-grandson, and daughter's son successively inherit; on failure of these, the paternal great great-grandfather's grandfather, his son, grandson, great-grandson and daughter's son inherit in consecutive order.*

* Jagad-natha, however, in violation of this order, inserts the succession of the Sakulyas or remote kindred of the paternal great great-grandfather and the rest before, or in preference to, his father and grandfather who are his Sapinda or nearer of kin. Thus:—"On failure of these (i.e. great grandson's son, and the rest,) the paternal grandfather's paternal grandfather; if he be dead, his son and other descendant to the third degree have successive claims; on failure of these, the daughter's son of the paternal grandfather's paternal grandfather, and other givers of funeral cakes in the triple set of oblations, inherit in order; in default of them, the son, grandson, and great grandson of the great grandson of the grandfather's grandfather, in the male line, have successive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather: on failure of them, the paternal great grandfather's paternal grandfather is heir; if he be dead, his son, grandson, or great grandson, in the male line, his daughter's son, the son of the great grandson in the male line, and the son of that great grandson's son, and the son of this last mentioned descendant, have successive claims as before; on failure of them, the paternal great grandfather's paternal great-grandfather, his son, grandson and great-grandson, his daughter's son, the son, grandson, and great grandson of this great grandson, similarly inherit in order." (Vide. Coleb. Dig. Vol. III. p. 501.) But this is not consistent with the reason of the law:—I. Because the succession of the Sakulyas or distant kinmen of the great great-grandfather is recognised before, or preference to, his father, who is his Sapinda or nearer of kin; and II. because such order is repugnant to the two texts of Manu: "To three must libation of water be offered; to three must obligation of food be presented," &c.; "To the nearest of kin the inheritance next belongs," and to the text of Vrihaspati, cited in the next page, and also to the analogy of succession, of the father and the rest, (ordained by Sri-Krishna and other authorities, as above given) according to all which, the father of the great great grandfather should succeed immediately after his (the latter's) daughter's son; and the great great grandfather's grandfather also should succeed in the same order.
133. Where there are many relatives in the agnatic line, remote kindred, and cognate kindred, he of them, who is nearest of kin, shall take the property of him who dies without male issue (i).—**Vrihaspati.**

(i) Propinquity of kin must be considered with reference to the greater or less benefits conferred on the deceased proprietor, as is confirmed by both the texts (of Manu) already above cited.*

**Succession of Samānodakas.**

134. If there be no such distant kindred, the Samānodakas, or kinsmen allied by common libation of water, inherit (u.)†

**Authority.** Since they must be considered as comprehended in the term Sakulya.†

(a) The relation of Samānodakas extends to the fourteenth person, in conformity with the text of Vrihat Manu: But the relation of Samānodakas, or those connected by an equal libation of water, ceases with the fourteenth person.‡

135. The Samānodakas also should, like Sakulyas, succeed in the order of proximity (e.)

(e) That is, by parity of reason, the Samānodakas in the descending line should succeed first and then those in the ascending line in the due order of proximity. Conformably with the maxim,—that the sense of the law, as ascertained in one instance, is applicable in others also, provided there be no impediment.—See *Dā. bhā.* p. 68, Note 31.

**Succession of the Spiritual Preceptor and the Rest.**

136. On failure of the Samānodakas, the Amodrjya, or spiritual preceptor (0) is the successor.*

Authority. For the text of Manu, "the spiritual preceptor, or pupil," &c. propounds their succession in order.*

(0) The spiritual preceptor is he who instructs (his pupil) in the vedas, after investing (him) with the holy thread, whence is he denominated 'Achārjya.' See Coleb. Dig. Vol. III. pp. 533, 534;—Dā. kra. sang. p. 27.

(k) A Pupil is he who receives instruction in the vedas. Āchārjya is he who gives such instruction.—Śrī-kṛṣṇa's commentary on the Dāya-bhāga, Sans. p. 238.—Vide Coleb. Dig. Vol. III. p. 534.

Vyavastha. 138. On failure of him, the fellow student (g) in the vedas (is heir.*)


(g) A fellow student is he who studies the vedas under the same preceptor.—See Coleb. Dig. Vol. III. p. 534.

Vyavastha. 139. In his default, the descendants of the same ancient sage, who are inhabitants of the same village, succeed.*

Vyavastha. 140. On failure of them, men who are descended from the same patriarch and inhabit the same village are the successors.*

Authority. According to the text of Gotama: "Persons allied by the funeral oblations, family name, and patriarchal descent shall take the heritage."*

Vyavastha. 141. On failure of all heirs as here specified, the Brāhmaṇas of the same village, endowed with learning in the three vedas and other qualities, are the successors.*

Authority. Manu says: "On failure of these, the lawful heirs are such Brāhmaṇas, as have read the three vedas (j) as are pure in body and mind, and have subdued their passions. Thus virtue is not lost" (i.)*

(j) "Have read the three Vedas,"—i.e. have studied all the (three) Vedas.—Vide. Coleb. Dig. Vol. III. p. 536.

(c) Virtue, which would be extinguished by the ample enjoyment (of its reward,) but is renewed by the acquisition of fresh merit from the circumstance of his wealth devolving on Brāhmaṇas, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.—See Dā. bhā. pp. 220, 221.

Vyavastha. 142. In default of them, the property goes to the king, excepting however the property of a Brāhmaṇa.*

Authority. I. Thus Manu: "The property of a Brāhmaṇa shall never be taken (as an escheat) by the king: this is a fixed law: but the property of the other classes, on failure of all,† the king may take."

II. Bouhdāyana:—Poison kills but one, a Brāhmaṇa's property (unduly appropriated) kills (also) the son and son's son: therefore the king shall on no account take the property of a Brāhmaṇa.†

III. Devala:—"In every case the king may take the property of a subject dying without an heir, except the estate of a Brāhmaṇa; for the property of a Brāhmaṇa dying without an heir must be given to learned priests."‡

IV. Sankha and Likhita.—The property of a parishad (d) descends to Brāhmaṇas, not to the king; wealth consecrated to the gods, or allotted to priests, must not be seized by the sovereign, nor a deposit open or sealed (a,) nor wealth regularly inherited, nor the property of infants or women: thus the Veda expresses: "The inherited property of a woman must not be seized by the king, nor (acquired) effects of an infant, nor the wealth of a woman received in the six modes of acquisition, nor the patrimony of infants."‡

(d) The term parishad in the above text signifies a Brāhmaṇa.§

(a) Deposits and the rest are terms employed indefinitely: hence the property consecrated to the gods, or allotted to the priests, must on no account be taken by the king, unless as a fine or the like.†

† The term 'all' intends as far as Brāhmaṇas. Vide Dā. bhā. p. 223. That is, on failure of all (heirs) including honest or good Brāhmaṇas. Vide Coleb. Dig. Vol. III. p. 570.
A failure of the descendants from the same patriarch or ancient sage, as well as of Brāhmaṇas, must be understood as occurring when there are none inhabiting the village, else an escheat to the king could never happen.—Dā. bha. p. 221.

Vyavastha. 143. In respect to the property of a Brāhmaṇa, it must however be understood that, in default of a duly qualified Brāhmaṇa, even a Brāhmaṇa of another village is the successor (p.)*

(p) From the expression “even a Brāhmaṇa of another village” it is deduced that—

Vyavastha. 144. In default of a virtuous Brāhmaṇa of the same village, a like Brāhmaṇa of another village is heir.

And not a common Brāhmaṇa of the same village so long as a virtuous Brāhmaṇa can be found.

Reason. Because, according to the texts: “Brāhmaṇas as have read the three vedas, as are pure in body and mind, as have subdued their passions: thus virtue is not lost,” &c., and “wealth is ordained for sacrifices; therefore, distribute it among good men, not among women, ignorant men, and such as neglect their religious duties;” — a virtuous Brāhmaṇa is preferable to an ignorant one.

Vyavastha. 145. On failure of a virtuous Brāhmaṇa, the property of a Brāhmaṇa should be given even to a common Brāhmaṇa.†

Reason. Inasmuch as the property of a Brāhmaṇa must never be taken by the king.

Vyavastha. 146. The common Brāhmaṇa of the same village should however succeed first. In his default, a like Brāhmaṇa of another village.†

Reason. Since an inhabitant of the same village is to be preferred to the inhabitant of a different village.†

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. On the death of a childless widow, who left apparently no heir, her property was seized by the ruling power, and a ‘proclamation was issued for the appearance of her heir and representative within a certain period. After the expiration of the period fixed, a Gosásin appeared, and presented a petition for the property, alleging that the widow was his father’s disciple; and he also proved, by the testimony of his four pupils, that she was his father’s follower: but, according to the established usage of this country, no Gosásin has ever received any property of his disciple, and it does not appear, that in the instance of any disciples of a Gosásin dying without an heir, such Gosásin received his property under the jurisdiction of this court: under these circumstances, is the Gosásin, according to law, entitled to succeed as her heir; and can he, as such, claim her property?

R. In default of heirs down to the Samásnodakas, or kinsmen allied by the common libration of water, the succession devolves on the spiritual teacher (Áchárjya.) The Gosásin is the widow’s Guru-puttra or the son of her spiritual guide. A Guru is not termed an Áchárjya. If the widow was not of the Bráhmanical order, her property should escheat to the king, who alone becomes heir. So Manu directs:—“The property of a Bráhmaṇa shall never be taken by the king: this is a fixed law. But the wealth of the other classes, on failure of all heirs, the king may take.”—Zillah Hoogly, April 3rd, 1817. Macn. H. L. Vol. II. Ch. I. Sect. VII. Case I. (pp. 100, 101.)

Q. Bala-rám-sitá Dás, (a devotee,) had appropriated a building for religious worship, and had established in it an image of the deity. On his death, the plaintiff, who is the widow of the son of Prít-rám, his Práhhit, or spiritual preceptor, preferred a claim to the temple in question; a son’s son of the founder being then living. Under these circumstances, according to the Hindu law, is the claim of the plaintiff in virtue of the relinquishment or appropriation valid, or is the heir of the founder to be considered as owner of the temple?
R. The building, with the deity, was relinquished to the Purohit and not given to him; indeed, the founder having relinquished a building in which he had established an image of the deity, did in fact give that building to the deity; hence it belonged to the deity solely: for the deity existing therein, it was impossible to give it to another. By mere relinquishment, proprietary right cannot be established; and, consequently, as the Purohit himself never possessed any proprietary right, none can possibly appertain to the widow of his son. The appropriation, which was an auspicious act, is common to the heirs of the founder, in whom the right of enjoyment is vested.—City of Moorshedabad. Lakkhi-thákuráyí versus Keval Pantkí and others.—Macn. H. L. Vol. II. Ch. I. Sec. 7, Case IV. (pp. 102, 103.)

Succession to the property of hermits and others.

The property of a hermit, an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil, and the holy preceptor take.*

On failure of these, the associate in holiness, or the person belonging to the same order, shall inherit.

Thus Jágyaválaya says:—The heirs of a hermit, of an ascetic, and of a professed student, are in their order (m,) the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness.*

(m) “‘Order,’” that is, the inverse order.* Therefore,—

Vyavasthá. 147. The preceptor takes the property of a professed student.*

" 148. The virtuous pupil inherits the property of an ascetic.*

" 149. The spiritual brother, that is, he who is engaged in the same pilgrimage or sojourns in the same hermitage, takes the property of a hermit.*

Vyavasthá. 150. On failure of these, the associate in holiness or the person belonging to the same order inherits.*

The professed student is of two descriptions—perpetual or Noish-thika, and Upa-kurbo or temporary.*

**Vyavastha.** 150. The preceptor inherits the property left by a perpetual student.*

**Authority.** For, abandoning his father and the rest, he makes a vow of residing for life in his preceptor's family.*

**Vyavastha.** 151. But the property of a temporary student would be inherited by his father and other relations.*

**Authority.** Since he does not enter on any such vow, but merely attends his preceptor for the purpose of instruction.*

---

CHAPTER II.

SECTION I.—ON USAGE OR CUSTOM &C.

Although the rules laid down in the preceding chapter are the general maxims of the law, according to which succession devolves, yet,—

Vyavastha. 152. If an usage have obtained in a country, district, village, nation, tribe, class, or family, such usage supersedes the general maxims of the law.*

Authority. I. Bhrigu (says): "whatever be the usage of a country, tribe, or nation, body of people, or village, let that be followed, and let partition of heritage be made in conformity thereto."—Kátyáyana cited in the Dáya-tattva. Sans. p. 7.

II. Immemorial custom is transcendent law, approved in the sacred scripture and in the codes of divine legislators: let every man, therefore, of the three principal classes, who has a due reverence for the (supreme) spirit (which dwells in him,) diligently and constantly observe immemorial custom.—Manu, Ch. I, v. 138.

III. Thus have holy sages, well knowing that law is grounded on immemorial custom, embraced, as the root of all piety, good usages long established.—Ibid. v. 110.

Vyavastha. 153. But to supersede the general maxims of the law, the usage must be such as has been continuously observed from time immemorial, or for many generations.†

* Usage being a branch of the Hindu law, which, wherever it obtains, supersedes its general maxims.—Strange’s Hindu Law, Vol. I p. 249.

† Although in this country we cannot go back to that period, which constitutes legal memory in England, viz. the reign of Richard I, yet still there must be some limitation, without which a custom ought not to be held good. In regard to Calcutta, I should say that the Act of Parliament in 1778, which established this Supreme Court, is the period to which we must go back to found the existence of a valid custom, and that after that date, there can be no subsequent custom, nor any change made in the general laws of the Hindus, unless it be by some Regulations by the Governor General in Council, which has been duly registered in this Court. In regard to the Mofussil, we ought to go back to 1798, prior to that, there was no registry of the Regulations, and the relics of them are extremely loose and uncertain.—Extract from a Judgment of Sir Charles Grey, C. J. See Clarke’s Reports, pp. 113, 114.
Authority. 'A king who knows the revealed law, must inquire into the dharmas (a) of classes, the dharmas of districts, the dharmas of traders and the like, and the dharmas of families, and shall establish their peculiar dharmas.'—Manu, Ch. VIII. V. 41.

The king who knows the revealed law, shall know the long continued practices of Bráhmanas and other classes, that is jájana, &c., the established and continuously observed usages of a country; the rules of traders and the like, and the customs established in a family and continuously observed by it, and shall establish those in civil matters, provided they be not repugnant to the Vedas; for Gotama says: "the dharma (a) of a country, class, or family, should be respected when it is not repugnant to the Vedas."—Kulláka Bhatta's commentary on the above text of Manu.

(a) The word 'Dharma' here signifies usage, custom, practice, or rule.

Vyavastha. 154. The usage which has not been invariably observed from time immemorial, should not be held to supersede the maxims of the law.

Vyavastha. 155. The prevention of enforcement of a custom or usage by violence or undue means should not, however, be held to be a breach of such usage.

Vyavastha. 156. The usage of a country, &c., established by agreement of the people, and not repugnant to the Vedas and the codes of law (Smriti,) should also be respected and observed.

Authority. The usage or practice which has its origin in the general agreement of the people should be carefully preserved, as well as that which is established by a king; provided such usage be not opposed to one's own dharma. (a)—Jágyavalkya.

Vyavastha. 157. Where no express law is found, one should be established on approved usage.—See Coleb. Dig. Vol. I. p. 95.

Authority. I. What has been practised by good and virtuous men of the twice-born classes, if it be not inconsistent with
the legal customs of provinces or districts, of classes and families, let the king establish.—Manu. Ch. VIII. v. 46.

II. The use of law is only to prevent multiform practices at the will of the men of the present generation. Where many texts of law are inconsistent, or many interpretations of the same text are contradictory, usage alone can be received as a rule (of conduct.) But where no (positive) ordinance is found, there is nothing inconsistent with any known law, and in that case approved usage alone must regulate the proceedings. Still, however, the example of learned and virtuous Brähmanas should be followed.—Coleb. Dig. Vol. I. p. 96.

Musst. Mahá-máya Debí versus Gouri-kánta Choudhuri.

Cases bearing on the vyavastha-s Nos. 192 & 193.

I. Mahá-máya's claim as heir to her husband to the moiety of an estate, was dismissed, on proof that her husband's brother succeeded to the whole estate (previous to the grant of the Dewanny) under a custom by which it always devolved entire on one heir. But it was at the same time provided, in conformity with a general maxim of the Hindu law, that the plaintiff, as a member of the family, should receive (as she appeared to have before done) a maintenance from the estate.—23rd May, 1808. S. D. A. Rep. Vol. I. p. 236.

Rasik-lál Bhanja and others versus Paras-mání.

II. Where, by the custom of a family, childless widows took no part of the inheritance, and an Ikrur-namáh, executed by four brothers, who at the time owned the whole property, declaring the practice of the family as stated, was produced in evidence; it was held that such childless widows were excluded from the inheritance.—9th June, 1847. S. D. A. Decisions, p. 205.

Rajá Bishwa-náth Singh versus Rám-charan Majumdar.

III. The existence of a family usage, by which an estate descends to the eldest son of the proprietor will not preclude an eldest son from being bound personally to his brothers by admissions formally made to them, acknowledging their right to co-heirship along with himself.—16th February 1850. S. D. A. Decisions. p. 20.

But such admissions will not be valid against the eldest son, in favour of an alleged adopted son of one of his brothers, so as to bar
inquiry on the pleas that there is also a family usage which precludes inheritance by adoption, and that the adoption, alleged to have been made, was otherwise not correct according to law.—Ibid.

Rám-gangá Deo, Appellant versus Durgá-maṣi
Juba-ráj, Respondent.

IV. In the suit instituted by the Juba-ráj against the son of the late Rájá of Tiprah, for succession to the Tiprah zeminfaree, the Court (present J. H. Harington and J. Fombell) observed that by the usage of the family, the person appointed Juba-ráj by the Rájá for the time being, if alive at the time of the Rájá’s demise, appeared to have regularly succeeded, unless prevented by force or other undue means. To determine the Hindu law, with reference to such custom, the Court, after delivering the genealogical tables into the hands of their paṣḍits, proposed to them the following questions:—

1st. What is implied by the word Juba-ráj? And to whom does the śāstra apply that term?

2nd. If it be the custom of a Hindu family, possessing a ráj and zeminfaree, that the Rájá, on succeeding to the ráj, appoint one of his relatives to be Juba-ráj: and that, on the demise of the Rájá, the person so appointed Juba-ráj, succeed to the ráj and zeminfaree, is such a family custom repugnant, or not, to the Hindu law of Bengal?

3rd. If in a family, in which the custom above mentioned has existed for generations, Rájá Ráj-dhar Māṣik on his accession to the ráj appointed Durgá-maṣi (the respondent,) great grandson of Dharma Māṣik to be Juba-ráj; and afterwards appointed his own son Rám-gangá Deo (the appellant) to be Bara Thákur; under such circumstances, according to the law, as well as the custom of the family, whether had Durgá-maṣi the right to the ráj and zeminfaree, as Juba-ráj, on the demise of Ráj-dhar Māṣik, or Rám-gangá Deo, as son and heir of the last Rájá?

The answers delivered by the paṣḍits were as follows:—1st. The term Juba-ráj implies young Rájá. The son of Rájá may be constituted Juba-ráj, on performance of certain ceremonies prescribed by the śāstra, and the term be applied to him in its literal meaning. A Rájá’s brother, or other relative, may also be constituted Juba-ráj
with the ceremonies above alluded to; and the term, as applied to the latter, is in a sense which usage has given it. 2nd. If a Rájá, on his succession to the Ráj of his family, constitute one of his near relations Juba-ráj, such person, as Juba-ráj, succeeds to the Rájá at his demise. The custom is legal, in families where it has subsisted for generations, according to the authorities of the Hindu law current in Bengal. 3rd. On the demise of the Rájá, a near relation succeeds, as Juba-ráj, even though there be a son of the deceased. The custom, specified above, having existed in the family of the parties for many generations, Durgá-maṣi, on the death of Rájá Ráj-dhar Móṣik, was entitled to succeed as Juba-ráj; and Ráma-gângâ Deo, as the son, had no title to the succession.

On consideration of the above answers of their paṇḍita, the Court held that, according to the family custom, sanctioned by the Hindu law, the respondent was the rightful successor, as Juba-ráj, to the late Rájá, but as, according to established usage, and under the provisions of section 2, Reg. X of 1800, the zemindarée is not liable to division, the Court at the same time provided in the judgment that Respondent should hold the zemindarée, subject the usual charge for maintenance of the members of the family and other established disbursements.*—24th March, 1809. S. D. A. Rep. Vol. I. p. 270.

V. In the case of Mahá-rájá Garur-náráyan Deo of Pachete versus Ánand-lól Singh it being placed beyond all doubt that, by the ancient custom of this family, the reigning Rájá is succeeded by his eldest son, and that other sons as well as the minor branches of the family received merely an allowance for their subsistence, and further

* The principle of this decision corresponds with the rule prescribed in section 2, Reg. X of 1800, that Regulation XI of 1793, shall not be considered to supersede or affect any established usage, which has obtained in the Jangli Mahaul of Midnapore, or other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased. Regarding the appointment of a Juba-ráj, as a virtual devise of the succession, the decree in this case may also be considered within the spirit of Section 6, Regulation XI of 1793, which allows any actual proprietor of land to bequeath or transfer his or her entire landed estates to one or more persons, in exclusion of all others by will, or other writing, or verbally; provided that the bequest or transfer be not repugnant to the Regulations of the British Government, nor contrary to the Hindu or Mahomedan law.—S. D. A. Rep. Vol. I. p. 273.
that the successor to the \textit{râj} has full power to annul, cancel, alter, modify, or confirm the arrangements of his predecessor as to him may seem fit, the majority of the Court accordingly pronounced a decree in favour of the appellant (plaintiff,) whose claim was to recover possession of a \textit{parganâ} granted by his predecessor.—The 14th of February, 1840.—S. D. A. Rep. Vol. VI. p. 282.

VI. In the case of \textit{Har-lâl Singh} versus \textit{Juráwon Singh} it was held that a \textit{ghâtaváli} mehawul in Zillah \textit{Bhurhûm}, with reference to the usual practice and meaning of the term \textit{ghâtaváli}, is not divisible, on the death of an incumbent among his heirs, but should devolve entire on the eldest son, or the next \textit{ghâtaváli}.—The 19th of June, 1837.—S. D. A. R. Vol. VI. p. 169.

VII. In the case of \textit{Thákuri Chhattra-dhârî Singh} versus \textit{Thákurí Tilak-dhârî Singh} the succession by primogeniture to an ancestral estate in \textit{Chôté Nôptore} was, agreeably to the family usage, upheld against a claim for division thereof under the Hindu law of inheritance.—The 22nd of May, 1839.—S. D. A. R. Vol. VI. p. 260.

VIII. In the case of an estate in \textit{Môn-bhûm}, it was held that, according to the previous family custom succession vested in the eldest son of the deceased \textit{Râjá} born of any of his wives, in preference to the eldest son of his \textit{Pât Râñî}.—\textit{Râjá Râghu-nâth Singh} versus \textit{Râjá Hari-har Singh}.—The 8th of June 1843.—S. D. A. R. Vol. VII. p. 126.

IX. The \textit{Kumwar} or the second son of a \textit{Râjá}, on the death of his eldest son, A, the \textit{Thákur}, made over the \textit{Parganâ} of Sonepore to A’s sons. B, the \textit{Kumwar}’s younger son sued to participate. Held, that the \textit{Kumwar}’s eldest son, the \textit{Thákur}, was entitled, agreeably to the family usage, to succeed to the \textit{gadi} and to the entire estate, and B’s claim was dismissed.—\textit{Lôlah Indra-nâth Sâhi Deo} versus \textit{Thákur Kâshî-nâth Sâhi} and others.—The 3rd of February, 1845.—Sudder Dewanny Adawlut Decisions, page 17.

X. It is no bar to the division amongst heirs of an estate, the property of a Hindu family, that it previously belonged to another family, in which the custom had obtained that the whole estate

\textit{*} But it seems that although the eldest will succeed to the \textit{ghâtaváli} lands to the exclusion of the others, the latter are entitled to maintenance if they choose to stay and perform a \textit{ghâtaváli}’s duty.

XI. In a suit for succession to a moiety of the estate of the Rājā of Tirhut, the claim was dismissed on the ground that the succession devolved upon the defendant, in virtue of a deed executed in his favor by the late incumbent, such succession being in conformity with the long established usage of the family in which the title and estate had uniformly devolved entire for many generations. — Māhā-rāj Kunwar Bāsudev Singh versus Māhā-rāj Rūdra Singh Bahādur. The 27th of February, 1826. — S. D. A. R. Vol. VII. p. 228.

Bīr-chander Juba-rāj (Defendant) Appellant versus Nil-krīṣṇa Thākur (Plaintiff) and others Respondents.

XII. This case involved the succession to the Tiprah Rāj. The Defendant had succeeded to the Throne and was recognized by the Bengal Government as de facto Rājā, after the death of his brother the late Rājā. The plaintiff (a half brother) lays claim to the Rāj on the ground that the defendant had taken possession under a false allegation of appointment as Juba-rāj or heir appointed by the late Rājā, whereas the Rājā had died without appointing a successor, and therefore according to the family custom the plaintiff was entitled to succeed as the eldest surviving son of the former Rājā, the father of the late Rājā. Held in appeal — 1st. that the late Rājā had a full right according to the custom of the family to nominate whomsoever he chose to be Juba-rāj; and that the person so appointed invariably succeeded to the Rāj; 2ndly. That according to Hindu law the defendant as whole or uterine brother of the late Rājā had a preferable title over the plaintiff a half brother; and 3rdly. that the defendant from the evidence adduced had been only appointed Juba-rāj at a ceremony held on the day previous to the death of the late Rājā. — Abstract of the above case. See Sutherland’s Weekly Reports, Vol. I. page 177.

See also the following cases: —


REMARK. This custom, by which the succession to landed estates invariably devolves on a single heir, without division, has been recognised and declared legal by Reg. X of 1800. A formal enactment was not perhaps necessary as far as the Hindu law is concerned, that law itself providing for exceptions to its general rules, by declaring that particular customs shall supersede general laws. "A decision must not be made solely by having recourse to the letter of written codes, since, if no decision were made according to the reason of the law,* there might be a failure of justice."—Vēnāśapati.

CASE No. 199 OF 1856.


The plaintiff claims a moiety of the Jelamuta Zemindaree under the ordinary rules of the Hindu law of inheritance. The defendant pleads a family custom under which the landed property invariably descended to the eldest son, or, on failure of issue, to the next male heirs in exclusion of all other heirs. As the defendant is unable to establish the existence of the alleged family custom, the decision of the lower court was reversed, and a decree given for the (plaintiff) appellant. Whenever a plea of family custom is set off against the ordinary law of inheritance, it is necessary that usage be ancient and invariable, and be established by clear and positive proof.—Marginal Note to the above case decided on the 7th of June 1858—See S. D. A. R. A. Decisions for 1858, p. 1132.

II. In the case of Bābu Griyā-daḥī Singh versus Kolāhal Singh and others, it appearing on evidence that the estate of the deceased had not invariably devolved entire on the chief heir, but had been taken by the most competent, and had been occasionally held by several heirs conjointly, the Sudder Court considered the plaintiff's claim under the custom of the family not established, and ordered the estate to be divisible among the heirs according to the Hindu law of inheritance, and decreed partition of the estate among the heirs in opposition to

---

* Or according to immemorial usage; for the word "Juke" (used in the above text) admits both senses.—See Colebrooke's Digest. Vol. II. p. 126.
the claim of one heir to hold the same as an individual estate.—19th January, 1825. S. D. A. Rep. Vol. IV. p. 9.

This decision was in appeal confirmed by the Judicial committee of the Privy Council on the 8th of December, 1840. See Moore’s Indian Appeals, Vol. II. p. 344.

III. In the case of Samran Singh and others, Appellants, versus Khedan-singh and Har-lāl Singh, the respondents pleaded the peculiar usage of their family, which, they averred, was sufficient to regulate the mode of succession: and they adduced two instances, in which the distribution had been made by the number of wives without any reference to the number of sons that they had borne respectively. The proceedings in this case were delivered to the pāṇḍīts for an exposition of the Hindu law, and from their written opinion, it appeared that to legalize any deviation from the strict letter of the law, it was necessary that the usage should have been prevalent during a long succession of ancestors in the family, when it becomes known by the name of kulāchār. In support of these opinions the following texts of Vṛiṇārupati and Kātyāyana were cited:—“Where there are an equal number of sons borne of two or more different wives, equal in degree, the distribution is to be regulated according to the mothers; but where the number of the sons (by different wives) is unequal, the distribution is to be regulated by the number of sons.” “Where a usage is hereditarily and scrupulously adhered to, it acquires the appellation of duty; and must be adhered to.” On receiving the above exposition of the law, the first and second Judges of the Sudder Dewanny Adawlut, who tried the appeal, being clearly of opinion that the plaintiffs had not proved such a usage as is required to justify a deviation from the Hindu law of inheritance, awarded them a two-anna share of the Zemindarsee (in conformity with the Hindu law.)—The 27th of June, 1814.—S. D. A. Rep. Vol. II. pp. 116, 117. (See ante, p. 18.)

Pratiḥ-dev versus Sarbba-dev Rāykat.

Case bearing on the vyāvasthā No. 155.

A claim to an estate on the plea of family usage whereby a brother succeeds a brother to the prejudice of surviving sons, disallowed, on proof that such was not the family usage, but only in one instance the brother had seized on and maintained his title by violence.—The 19th of January, 1818.—S. D. A. Rep. Vol. II. p. 249.
Vyavastha. 158. The succession to the property of Mohantas, Brigris and the other like devotees, who may be said corrupt yatis (ascetics,) is regulated not by the rule applicable to the pure yatis,* but according to the custom of the sect or math (temple) to which they belong.

Vyavastha. 159. But the property acquired by the (so called) ascetics, who have not bona fide retired from the world, devolves on their former heirs.

Vyavastha. 160. The established custom of Mohantas is, that out of the chelé (disciples) whom a mohanta, in his capacity of guru or spiritual teacher, instructs in the doctrine of the sect, some one is selected by him to succeed at his decease; and that, after his death, the Mohantas of other similar institutions in the vicinage convene an assembly of the order, for performing the bhánḍárá or funeral obsequies, at which they generally confirm the nomination made by the deceased, and install the disciple he selected as his authorised successor.

Ganesh Gir versus Omráo Gir.

Cases bearing on the vyavasthas Nos. 158, 159, 160.

I. On a claim by Tej Gir, a Sanyási, against Ganesh Gir, to the succession of a deceased Mohanta, the Sudder Court (present, Messrs. H. Colebrooke and J. Fombe) referred the case to a pancháét (or religious assembly) of the sect, who after reciting that, Ganesh was never elected, and got possession of the math or temple (in dispute,) stated that, according to the usage of the sect, the proper successor to a Mohanta was his khás chelé or principal pupil; that at the obsequies of Prem Gir, Tej Gir, his principal pupil, was elected his successor; and that (on the death of Tej Gir) Omráo Gir, the principal pupil of Tej Gir, was the person now entitled to the office, and has been elected accordingly. The pasditas of the zillah and provincial courts certified the legality of this award. The pasditas of the Sudder Dewanny Adawlut having also been referred to, reported that, "by the law of the Sanyási sect, a guru or spiritual teacher must be succeeded in his rights or possessions by his chelé or adopted pupil." In conformity with the award of the

* See vyavastha No. 148: ante, page 312.

Gangā Dās and others versus Tilak Dās.

II. In this suit which was for a mohantī, on the ground that the plaintiff was the successor appointed by the last incumbent, and afterwards regularly installed, the case was not made out, and the claim was dismissed. But the defendant in possession of the endowed lands not having been regularly elected or installed after the death of the last Mohanta, as required by the usage of the sect, the Court (present Mr. Harington) directed that an assembly of Mohantas should be convened to elect and install the defendant, if entitled, or another person in whom the title might be vested.—The 26th of November, 1810. S. D. A. Rep. Vol. I. p. 309.

III. In this case of Dhyān Sing Gīr versus Máyá Gīr, it being proved that the late Mohanta Tulā Gīr appointed the defendant (Máyá Gīr) his principal pupil, and portioned off other pupils, that they might not interfere with him; that he was installed as the successor at the celebration of the obsequies; and that the plaintiff was present at that time, and did not then set up any pretensions; the plaintiff's claim was dismissed.—15th August, 1806. S. D. A. Rep. Vol. I. p. 153.


CASE No 201 of 1851.

Mohanta-madhu-ban Dās, (Defendant,) Appellant versus Hari-krishṇa Bhanja (Plaintiff) Respondent.

JUDGMENT.

Case bearing on the vyāvastha No. 159.

Messrs. Jackson and Mytton.—The Court has already ruled on the arguments heard on both sides that the fact of the adoption has been established,

* The present decision establishes a precedent where no successor has been nominated; and it may be considered the ascertained rule, in such cases, that "the proper successor of a Mohanta is his kāla child or principal pupil," though, from the result of inquiries instituted in the case above noticed, the election or installation of the successor by an assembly of Mohantas at the obsequies of the deceased Mohanta, appears to be in all cases indispensable and conclusive.
and that the legality of that adoption is not now open to question. It remains only to declare on the point last argued whether the fact of the deceased having become a Byraghee (Beirdgi) is established; and whether the withdrawal from the world, and retirement from peculiar affairs and occupations, were such as to bar the succession of the adopted son, to the property acquired by the deceased subsequently to the period of his becoming an ascetic, and to constitute a right in his chela or disciple to succeed to it in preference to the adopted son.

It seems from the authorities cited, that every person calling himself a Byraghee does not thereby exclude the heirs from succession to his property, subsequently acquired. To become a religious ascetic and exclude his heirs from succession to property subsequently acquired, he must bond fide retire from all worldly affairs, and in fact become as it were dead to the world, leaving all the property then vested in him to the legal heirs who succeed to it at once. There seems to be no doubt that the deceased joined the sect of Byraghees, and was elected a Mohunt (Mohanta) or superior of one of their Monasteries; but he still retained the title and style of a Rajah, and used this title in his legal affairs. He carried on worldly affairs, and communicated with his family, and drew from Government a pension of Rs. 8000 a year as Rajah, in which capacity it was granted to him. A strong presumption arises that the property in question was part of, or acquired by the use of part of, that very pension, and not in the exercise of the functions of a Byraghee or recluse. The deceased cannot, therefore, be considered to have become a religious recluse to such an extent as to exclude his legal heirs from succeeding to the property in question. The right of the legal heirs to succeed, therefore, is established, and no sufficient ground has been shown for setting aside the decision of the lower Court. The decision is, therefore, affirmed, with costs of appeal against the appellant.—The 9th of December, 1853.—S. D. A. D. pp. 1089—1093.

Mohanta Rama Dás and others (Plaintiffs) Appellants versus Mohanta Ashbal Dás and others Respondents.

Both parties in this case allowed that the endowment is one held and enjoyed by ascetics. It is contended by the plaintiffs that under the practice of Mithilā, an ascetic may keep women and have sons, and that those sons by virtue of their sonship succeed to the property, and the
chellaship follows the sonship. The defendant urges that an ascetic cannot change the succession of an endowment belonging to ascetics by any conduct of his in connection with the endowment, and as he is the chella of the deceased Julloo Dass, he is entitled to retain possession.

JUDGMENT.

We think it quite unnecessary to enter into the question of sonship either in or out of wedlock, for, according to the Vivâda-chintâ-mañji and also according to all principles applicable to trust properties, it is clear that an ascetic, a mere life-tenant, can not alter the succession to the trust by an act of his own in connection with the status under which he originally acquired the trust. We think, therefore, the plaintiff's claim is altogether baseless, and dismiss the special appeal with costs.—The 21st of September, 1864.—H. C. A. Sutherland's Weekly Reports, Vol. I. p. 160.

Admitted legal opinion selected and approved of by
Sir William Macnaghten.

Q. A Boirâgi, or religious mendicant, having consecrated an idol died leaving considerable property; subsequently to his death his brother claims his estate; and a person who is a stranger to him in blood also claims the estate, and adduces sufficient evidence to prove that the mendicant had left the order of a house-keeper, had become an ascetic, and had made him (the claimant) his pupil and follower; on the strength of which he had performed the exequial rites of the deceased. In this case, which of these persons is entitled to inherit the property of the defunct?

R. Supposing the mendicant to have actually left the order of a house-holder, and to have become an ascetic, in this case his follower and pupil is entitled to the inheritance, to the entire exclusion of his brother, whose fraternal relation can be held to have effect so long only as the proprietor continued in the order of a house-holder.

Authority.—Vrihaspati: "Decision must not be made solely by having recourse to the letter of written codes, since, if no decision were made according to the reason of the law, there might be a failure of justice."—August 5th, 1817. Macn. H. L. Vol. II. Ch. I. Sec. 7, case 3. (pp. 101, 102.)

* The above opinion is doubtless correct, though the authority cited in support of it appears wholly irrelevant. The following passage of the Dâya-bhasya justifies the ex-
Q. A religious mendicant died, leaving no heir; but there is a person who calls himself the pupil of the same spiritual teacher with the deceased, and alleges that he is therefore entitled to the succession. Is such person recognised as a brother by the fraternity of mendicants?

R. There is no provision in the Dáya-bhága and other works of law that, on the death of a religious mendicant, his spiritual teacher’s pupil has the right of succession to his estate, and there is no relationship between them; but the person who becomes a follower of the spiritual teacher is universally termed a religious brother by the fraternity of devotees. If such person attend the deceased on the point of death, and perform his exequial rites, and if the spiritual teacher himself disclaim all right of succession, such religious brother is entitled to the inheritance. This doctrine is justified by universal usage.—Macn. H. L. Vol. II. Ch. I. Sec. 7, (p. 101.)

Gobinda Dás versus Rám-sahóy Jamádár and others.
3rd August, 1843.

Cases bearing on the Vyavastha No. 153, 159.

The promovent filed his libel, alleging that he was the chelá or disciple and legal representative in estate, according to the laws and usages of Hindus, of one Mákhan Dás, deceased, a Hindu Boirági or religious devotee.

To this libel an exceptive allegation was filed, dissenting from the promovent's being allowed to proceed further with the cause, for that he was a person having no interest in the subject matter of the suit, inasmuch as a chelá of a Hindu Boirági does not, as such, succeed to the property of such a Boirági in the event of intestacy.

Leith and Fulton in support of the allegation.—For the purposes of this argument, we must assume that the deceased was a Boirági or religious devotee, and the promovent his chelá or disciple. Such a promovent would not succeed in the event of intestacy. Hindus are divided into four classes, of which the three higher classes (viz. Bráhmana, Kshatriya, and Vaisáhya) are called twice born classes, and the position of law as given in reply to the question. "The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil, and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit."—Dáya-bhága, page 225.
fourth Shudra. For the members of the twice-born classes there are three religious orders, into which they may enter if they wish to partake of the divine essence after death. To the Shudra the privilege of entering a religious order is denied. The three religious orders, into which the twice-born classes may enter are those of the Bana-prastha (or hermit,) the Sanyasi or Jati (the ascetic,) and the Brahmachari (religious student.) The whole of the authorities refer to a passage of Jagnyavalika, where such is laid down to be the law, and clearly shows that the wealth of a Bana-prastha is inherited by his dharma-bhrata eka-tirthi (or holy brother of the same hermitage,) that of a jati or yati by his sat-shishya (or virtuous approved pupil,) and that of a Brahmacari by his Acharya (or spiritual guide.)

Now the term Boiragi simply means a person who restrains his passions. It is not a name descriptive of one of the religious orders, of which a man must be a member in order that his goods may be inherited by others than his blood relations. Any one may be a Boiragi, be he a Shudra or a member of the twice-born classes. The house-holder Boiragi is well known amongst the Hindus, and goods are inherited by his blood relations. Brahmacari is a Boiragi according to Manu. When used in a more technical sense, the term Boiragi is applied to the followers of Ramonanda, whereas the yati referred to in the above text of Jagnyavalika is the Tridanda Sanyasi, a sect who follow the doctrines of Ramonuja, which are different from those of Ramonanda.*

But again, assuming the Boiragi to be a sufficient description of the yati of Jagnyavalika, his goods are not inherited by his chela or pupil in that capacity, but by his sat-shishya (or virtuous approved pupil.) A person may become the chela or follower or pupil of a yati of his own accord. After he has served the yati for a year, if the yati thinks him worthy of the honor, he makes him a shishya (an approved pupil,) and then should he be the sat-shishya or best of the approved pupils, he would inherit. On turning to Wilson's Sanscrit Dictionary we find the word cheda or chela to mean a servant. There is a period of servitude for a twelve-month necessary before the aspirant pupil can become a shishya or partake of its privileges. The pupil

in this estate of probation is called a chelā, and after a twelve-month he may become a shishya if approved of, but not necessarily so; but a chelā as such can never inherit. There is no instance in the Reports of the Sudder Dewanny Adawlut applicable to this case: the only cases there relate to the succession to the Monasticship of the Maṭha of which Rāmānanda was the originator, and those cases clearly shew that the succession depends on election, and not upon inheritance merely.

GRANT, J.—We are of opinion that the exceptive allegation must be allowed; that more must be shown by the promonent on the face of the libel, than is stated, to show his right to sue. This exceptive allegation then must be allowed and with costs, the other party having liberty to amend.* SETON, J. concurred.—Fulton’s Reports, Vol. I. pp. 217—224.

* The following is an extract from a letter upon this subject, which the Editor received from Bhāṭa Prasanna-kumār Thākur, a gentleman of well known learning and repute.

"The word chelā is applied to a servant or one who serves another, and we find that under the authority quoted below one who serves his spiritual guide by word of mouth, with his heart, with his personal attendance and his wealth, may, when possessed of these qualities, be a shishya, and no one else. Hence the duty of a servant is a necessary preliminary qualification for becoming a shishya; during the probationary period above alluded to he cannot be called by any other name than that of a chelā or servant.

The conclusion I come to, therefore, is that a chelā or servant may, if qualified, be admitted a shishya, but the mere denomination of chelā does not necessarily imply the meaning of shishya. The Hindu law recognises the right of inheritance of the other, and, consequently, no chelā of a deceased ascetic can inherit his property, unless the former can prove himself his shishya too.

The following extracts from the first section of the work by Krishnānanda, called Tantra-sāra, compiled some time about the end of the 14th or the beginning of the 16th century, have been furnished to the Editor by the same learned gentleman:—"Let me, in the first place, describe the respective qualities which should from the character of a spiritual guide and of his religious pupil. With regard to the former, it is necessary that he be of gentle and mild disposition, and capable of controlling his passions. He is to be descended from a respectable family, modest, neat in his dress, of pure manners, and possessing reputation for good deeds, he must be pious, clever, and a man of good sense. He must be of one of the four orders or sects, full of devotion, and well conversant with religious works, and their rites and ceremonies; capable of inflicting punishment as of doing acts of favour; a person possessing these qualities may be properly called a spiritual guide. With regard to the latter, it is necessary that he should be gentle, modest, of a pure character, full of reverence, and possessing a good memory. He is to be able, and should be descended from a respectable family. He is to be a
In the goods of Sítá-ráM Dás, deceased.

Sítá-ráM Dás died on the 6th of September, 1858, leaving property within the jurisdiction of this Court. In December one Kámini Dásí applied for probate of a will, purporting to be his, and appointing her his executrix. In January 1859 Ritu Singh Roy entered a caveat, with an affidavit in support of it, which stated that the will was a forgery, and that, as the alleged testator was, at the time of his death, a Byraghee (Boirdgi), he, the caveator, was his shishya and heir, according to Hindu law. Supplemental affidavits, having been filed on both sides, the cause was heard on the 7th of July, when the court directed the following issues to be tried:—1st. Whether Sítá-ráM Dás was a Byraghee whose estate descended to his shishya or approved pupil or not? 2nd. whether the caveator was his shishya or not? 3rd. whether the will was genuine? The last issue only to be tried in case the first two should be found for the caveator.

These issues came on for trial on the 12th of August, 1859.

Baboo Prosunno Coomar Tagore, who was called to give evidence of the custom regulating the succession of Byraghees, stated as follows:—"I have heard the evidence given to-day. Byraghees are a sect, whose property descends to their approved disciples. The Byraghees of this place are not a pure and perfect class. According to the rules of the Hindu religion, Byraghees of the pure class are required to renounce the world. According to these rules, a Byraghee, if perfect, is not capable of holding property. But the practice is otherwise. In practice, they hold property and trade largely. A Byraghee's trading would be a moral offence but it would not disqualify him. Personal immorality would disqualify a Byraghee. In the pure class, when a chela (cheld) becomes a shishya he is required to perform a ceremony called bijiborna, he must be himself virtuous, otherwise mere performance of the ceremony of bijiborna will not qualify him to be a man of good sense, humble, and able to subdue his passions. These qualities are essentially requisite, and without these no one can become a religious pupil. A year's residence and association with each other is required to form the connection of the spiritual guide and the pupil: it is also enjoined in the Sūtra-angraha, that a good spiritual guide should put his dependant pupil to a year's probation. A knowledge of the mysterious and excellent Sūtras should not be imparted to every one without distinction: it should be imparted to a well behaved pupil after a year's residence with him."


ishya. The object of the ceremony is, that his nature and name be changed. The principal qualification is, that he restrains his passions. If a man becoming chela to a Yati (ascetic) during his salskhip were to live with a woman, it would disqualify him from being shishya, as he would not be a faithful chela. A man must be a sela before he can be a shishya. The ceremony of bijiborna, if performed, would be invalid, if it were found out that the man, when sela, had lived with a woman. I do not remember any such case. There was something like it in the Hooghly district. The rule as to a property descending to the approved pupil does not apply to all the cases. There are only three classes, namely the Yati, Banoprosta (vánaprastha) Burmocharee (Brahmachari);* under the two latter denominations byraghees cannot come. Yati is an extensive term, within rich byraghees and other sects come. There are fifty or sixty sects byraghees in which the pupil would succeed. Those that live in cities deal in money, and hold landed property, to which the approved pupil would succeed, if such were the rule of the particular mple to which they belonged. In the case of a pure Yati, the t-shishya would get his property,* but in the case of a corrupt Yati, e property would descend accordidg to the custom and usage of s particular temple. With regard to a pure Yati, the rule as to the property descending to the sat-shishya is universal;* but in the case of e corrupt Yati, it would depend upon the custom of the particular mple to which the Yati was attached. The Hindu law of inheritance requires that the sect be a pure sect, and does not provide for y that are not pure. Trading or holding any property does not belong to the pure sect. The pupil of the Yati of a pure sect mld succeed to his temple his cloths and his books. The re Yati can have no property, except such as I have mentioned.

A Yati have property derived from trade, it would be ruled by e custom and usage of the particular temple to which he might belong. The Ramayutas (Rímáyuts) have some very large temples con- nected with their sects in Jugger-nath, and I believe they have one mple in Calcutta near the Mint. According to the custom of those mple, the pupil succeeds. They are pure, and do not practise ise. A Ramayut could not trade, unless he chose to deviate from

* See ante, pp. 312, 313.
the rule of his sect. If he did so deviate, the rule of the sect would then depend upon the custom of the particular temple to which the Byraghee might belong. The approved pupil, after performing the ceremony I have mentioned, becomes like the Gooroo (Guru) or spiritual guide, and does what he does, and follows the peculiarity of dress which he observes. The Ramayuts have a white mark on the forehead—all put it on, even those who trade. I saw the last witness, he did not look much like the disciple of a Ramayut, the white mark is a peculiarity common to all the followers of Ramayut. In case of personal immorality, the shishyas ought to be ejected, and in a large temple the Government would interfere under Regulation XIX of 1810. By personal immorality I mean that which is immoral and wrong in itself. In the case of personal immorality on the part of the shishyas, if no ejectment take place in the life-time of the Gooroo, and if the succession is to be chosen by election, as is the case in some temples, the electors would represent the circumstance to the Local Agent. But if the succession go by inheritance the collector interferes. If the inheritance go by succession the approved pupil might succeed, but he would be liable to be removed. The Collector and Magistrate constitute the Local Agent under Regulation XIX of 1810, and they act under the Board of revenue. According to the Hindu law, the Ruling power is entitled to interfere, and the Collector and Magistrate represent the Ruling power.

To the Advocate General.—Having regard to the Hindu law, I conclude it would be thought that religious ascetics would have no other property than religious property, such as I have mentioned. There are many sects of Byraghees, and with a great many Byraghees the property could not, according to the Hindu law, go to the pupil; but it would by the usage and custom of the particular temple. There are always some differences amongst the various sects of Byraghees. Among the Bengal Byraghees there is not much about the approved shishyas, and the property would go by the Government law of inheritance to the next heir and not to the approved pupil. I have known cases where the property acquired by a Byraghee, who had traded, but was in other respects pure, descended to the sat-shishya. If the shishyas were guilty of personal immorality, it would, as soon as it was discovered, whether during his preceptor's life time or afterwards, dis-entitle him from inheriting—mere irregularity, such as
trade, would not disqualify him. The puro Byraghee, at the time of becoming shishya, takes a vow, the principal part of which is that he will restrain his passions. That is the very essence of the vow;—that he will worship the idol, present flowers and feed guests is only a part of the vow. There are two classes of shishya. The shishya of one class is a disciple and succeeds to the property on the death of his Gooroo. The shishya of the other class receives mutters (mantras) from the Gooroo without having any thing to do with the temple; he only receives the utterance of certain mysterious words, and worships the idol; he does not succeed, and you would know one from the other from his dress, manners, and habit of living.

If I were to renounce and become a Byraghee, I should be treated as if I were civilly dead, and my natural heir would take my property;—it would accelerate the succession. The last witness is not at all like Byraghee in appearance, he looks like a Sircar. The Ramayuts are a large and a pure sect. They have one temple here near the mint. It is subordinate to the Jager-nath temple, that temple is not in Ban Cerhar; if there had been a temple of repute in Ban Har, I should know of it. A Brahm in becoming a Byraghee gives up his caste. I don’t know particularly in the case of Ramayuts, but many sects give up their Brahminical thread. In the Ramayut sect if a Brahmin gave up his Brahminical name, it would be natural for him to give up his thread. A Khettry, on his becoming shishya, would follow his master and give up his name and caste; he would be the heir apparent. ‘Sing Roy’ is not a designation which a man would retain after becoming shishya, nor would he, I think, retain his thread. A Byraghee renounces the world and all worldly distinctions. He is born again. If he breaks his vow, he cannot resume his caste again without very heavy expense. A Brahmin can lose his caste by doing an act, but his child, if he does not live with his father, does not thereby lose caste. It is not a suspension, but an absolute forfeiture which takes place on a Brahmin becoming a Byraghee. If a Khettry becomes Byraghee, he may, if he choose, retain his thread, no one will interfere;—but it is very objectionable that a man should assume the thread if he is not entitled to it. It is an immoral act for a Byraghee to keep on the thread and assume false colors. If a man become a Byraghee, he would eat rice with his master. If I saw a man sitting at a distance from a Byraghee,
and eating, I should not conclude that he was a shishya. I have
never heard of an instance of a shishya, expecting to become his
Gooroo’s successor at the same time serving another master.

To Cowie—I never heard of such an instance as a shishya acting as
Collecting Sircar for another master. In the case of a shishya, who
has been guilty of adultery or concubinage, if not ejected in the life-
time of his Gooroo, he would be treated by the Sudder as disqualified.

To the Chief Justice—if a shishya married and had children, he
would no longer be considered as a disciple, and could not inherit; if
he did not marry, and had children, that would be still worse.

To Wells, J.—If I saw a man who claimed to be a shishya in a
menial secular employment, I should consider him an impostor.

The Caveator’s case was afterwards given up, and he was commit-
ted by Peacock C. J. for a contempt of court, on the ground that
he had prevaricated, made false statements and contradicted himself
in his evidence.

SECTION II.
ON THE LAW OF MIGRATION.

Vyavastha. 161. A family migrating from one to another
country is entitled to the benefit of the laws of the
former country, provided it have uniformly observed the
religious ordinances peculiar to such country, otherwise it
must be subject to the laws of the latter country.

Vyavastha. 162. It has of late been determined that a
Hindoo family migrating must be presumed,
until the contrary be proved, to have brought with it, and re-
tained, all its religious ceremonies and customs, and conse-
quently its law of succession.

Raj-chander-norayan Choudhari versus Gokul-chand Guko.

Case bearing on the vyavastha No. 161.

I. In this case the pandits’ answer to the questions
put to them recited, that—“if the family being from
Mithila, but dwelling in Bengal performed religious
rites with the people of Bengal, and held a Zemindaree in that pro-
vince, Gokul-chand (the sister’s son) is heir to it, conformably with
the Bengal law. But if the family merely dwelt in Bengal, and per-
fomed religious ceremonies with Mithilā people, and observed the
laws and usages of that province, then Rāj-chander (the son of a patern-
al uncle) will inherit agreeably with the Mithilā law.”* And from
the evidence taken it appeared that the purohit or family-priest,
of each of the parties, was a Brāhmaṇ of Bengal; that the ancestors
of the parties, whose family had been resident in Bengal for several
generations, had inter-married with Bengal women; that the rites
and ceremonies connected with funerals or marriages, had been some
times according to the Mithilā, and some times according to the
Bengal śāstra. Under the opinion given by their pādīts, and
on consideration that the contested lands were situated in Bengal;
that the family had been long resident in Bengal; and that there
had been no uniform observance of the ordinances of the Mithilā
śāstra, the Sudder Dewanny Adawlut (present J. Lumsden and
J. H. Harinton) held that the case had been well determined by the
provincial court according to the Hindu law of Bengal.—22nd of

II. But claimants to an inheritance, who had migrated from
Mithilā and had continually practised the usages of Mithilā in every
respect, were, on reference to the decision in the above case, held to
be entitled to the benefit of the laws of Mithilā.—Gangā-datt Jhā
versus Srí-nárāyan Roy and another.—24th April, 1812. S. D. A.

III. The same point was decided by the Judicial Committee of
the Privy Council in the case of Ratcepati Dutt Jha and others versus
Rajender Naraen and another.—12th February, 1839. 2 Moore’s
Indian Appeals, p. 182.

* The Hindu law, according to the doctrine of Bengal, is correctly stated, being
exactly conformable to Jīmēta-vaṃsā, Ch. 11, Sect. 6. § 8. The books of greatest autho-
ritv in Mithilā on the subject of inheritance, are silent in regard to the sister’s son;
and the established opinion is, that the male descendant of the remote ancestor shall
inhere, and not descendant through females of a near ancestor. If the family had been
shown to have continued in the observance of the natural laws and usages, namely, those
of Mithilā, the rule of inheritance, as established in that province, must have been fol-
owed. By the dicas of them, the adoption of the customs and laws of Bengal, and
employment of priests of this province in religious rites, the family is considered to have
adopted Bengal for its country in all matters.—Note by Mr. Colebrooke.
IV. Where a family of Bengalee Shoodra Sudgopes had migrated to Mithilā at a remote period, and it was proved by the evidence that they had adopted the laws and customs of Mithilā, the Mithilā law of inheritance was held to be applicable.—Rāñī Padmāvatī versus Bābā Datār Sing and others.—30th June, 1847. M. S. Notes of P. C. Cases. See Morley’s Digest, Vol. I. p. 332.

V. A family of Sodgope Brahmins, who had, many years previously to the institution of the original suit, migrated to Midnapore, were upon proof that they retained their laws and religious observances, held to be entitled to the benefit of the Bengal laws of inheritance.—Rāñī Srīmatī Debi versus Rāñī Kundal-latā and others.—December, 1847. Notes of P. C. Cases. See Morley’s Digest, Vol. I. p. 332.

No. 207 or 1861.

Janārdan Mīra versus Nabīn-chander Pradhān.

Regular Appeal from the decision of Mr. Littledale, Judge of Nudden.—

Case bearing on the vyavasthas No. 161,162.

This was an appeal from a decree in a suit brought by Abhoj-charan, calling himself co-heir with his brother Janārdan, according to the Hindu law prevailing in Bengal, in default of issue, natural or adopted, of Nil-kamal, deceased. The Zillah Court set aside the adoption of one Nabinsunder, said to have been made under authority from the said Nil-kamal, and ordered the plaintiff, as co-heir, to be put in possession of his share in the estate.

The minor, by his attorney, besides various technical pleas of under valuation of the suit, and the like, pleaded that the plaintiff’s family, into which he had been adopted, having originally migrated from Mithilā, and being still governed by the laws of succession as prevailing among Hindus in that province, plaintiff and his brother, being cousins on the mother’s side, could not be heirs of Nil-kamal, while many relatives in the paternal line were in existence. He also pleaded that the adoption had been fully authorized and formally made.

The material issues of fact as between the plaintiff and the minor were 1st.—Is the succession in this family governed by the law of Mithilā or by that of Bengal? 2nd. If the law of Bengal prevail, has the minor defendant been regularly adopted or not? Upon the first of
these issues a good deal of evidence was submitted to the court below, and the Judge found the law of Bengal to prevail.

By the Court.—We have to consider whether the Judge was right in coming to the conclusion that the law of Bengal ought to prevail in the present case. The evidence upon such a point is divisible into two classes; first, oral evidence, descriptive of the ceremonies and usages observed in the family at the present time, and within the personal knowledge of the witnesses; and secondly, the evidence of facts derived from the family history, such as their inter-marriages, successions, acts and admissions in court, and the like, which are by far more valuable as being definite and practical professions of custom and for the most part admitting of no dispute.

We do not find it laid down in any case what the presumption as to the law of succession is to be in the case of a proprietor domiciled in Bengal, but coming of a Mithilā family, in respect of property situated in Bengal. In the case of Rutche-putty Dutt, Jha and others versus Rájendr-náráyan Roy and another, the Privy Council, approving of the decision in Ráj-chander-náráyan Choudhuri's case, held affirming the Sudder Court's decree, "that, in a case where a family migrates from one territory to another, if they preserve their ancient religious ceremonies, they also preserve the law of succession." Thus, it being admitted that a Hindu migrating from one province to another, and acquiring property in the territory where he has settled, is at liberty to carry with him his personal law, so as to override the law of domicile, or that of the locus rei sitae; and regard being had to the constitution of Hindu society, and to the well-known attachment of Hindus to their ancient religious customs and observances, we think, after mature consideration, that a Hindu so migrating must be presumed, until the contrary be proved, to have brought with him, and retained, all his religious ceremonies and customs, and consequently his law of succession; and this more especially when the family is shown to have brought with it its own priests, who, and their descendants after them, continue their ministrations down to the period of contest. It will be for the party who sets up a departure from ancestral law, to show that the family has in some material respect abandoned its ancient religious usages, in which if he succeeds, he may contend that the principle laid down in the cases above quot-
ed does not apply; and of course, if he can show that in matters connected with succession, the law of the country of domicile has been adopted, the presumption arising from the observance of ancient customs (if such observances were proved) would at once be negatived.

Let us see, then, how far the plaintiff, who in this case asserts that a family originally from Mithilá have adopted the law of Bengal, has proved his allegation. The evidence which the Judge has considered as establishing this contention consists of, first, the testimony of thirteen witnesses examined for the plaintiff, who depose generally that "the religious ceremonies of the family have been partly performed according to the Mithilá shástras, and partly according to those of Bengal." Some of the witnesses specifying the marriage ceremonies as regulated by the former, and those connected with funerals and Upánayana by the latter. "One of the witnesses," the Judge observes, "Rám-char̄n Upádhyáy, the plaintiff's Purokít, and brother of the defendant Uttam-chander, state that many of the religious ceremonies are regulated by the shástars of Bengal, and some by the Mithilá law." After noticing the counter-evidence for the defendant which he considered less full on this point, and at once dismissing the evidence of Uttam-chander, as that of an interested party, the Judge refers to the case of Rájchander-náráyan Choudhuri, versus Gokul-chander Guho, and remarks that in the present case "the same features appear." Torturing, therefore, that decision, and looking especially to the fact of a succession by a childless widow in the family as a very strong circumstance, he decided the issue of Mithilá or Bengal in favor of the plaintiff. We may at once observe that, if the circumstances of this case were precisely similar to those in the case above cited, the decision would be easy enough. But it unfortunately happens that in both the leading cases on this point, the facts were so well ascertained as to have only a necessity for applying the law, whereas in the case before us the facts are disputed, and the evidence is conflicting. In the earlier case, on reference to the Report, we find it appeared from the evidence that "the Purokít of each of the parties was a Brahmin of Bengal, that the ancestors of the parties had inter-married with Bengal women" &c. &c. and the words of Mr. Colebrooke's foot note are—"By the disuse of them (the natural law of usages) and adoption of the customs and laws of Bengal, and employment of priests of this province in religious rites.
the family was considered to have adopted Bengal for its country in all matters." That was a case perfectly clear in which the appellant had nothing to rely on, but the original descent from a Mithilā family, which descent, however, became of no effect, because of the subsequent clearly proved conformity to the law of Bengal, where the family now resided, and where, moreover, the contested lands were situated." Here there is not a word of inter-marriage with Bengal women, and the family Purohits is, like the family itself, admittedly of Mithilā descent, his ancestor having in fact immigrated with the ancestors of the parties. On the other hand in the latter case, decided by the Privy Council in 1889, the admissions, equally explicit were all the other way. In that case it was acknowledged by the appellant that all ceremonies of mourning and rejoining, namely, all religious ceremonies and some of a civil nature including marriage were performed in the families of both appellants and respondents, by a Mithilā purohit and according to the Mithilā shāstras.

Thus, while the law of those cases is perfectly clear and readily applicable to the case before us, the state of the facts and of the evidence is wholly different. Now, upon a review of the oral evidence which bears upon the question of usage in the family, Bengal or Mithilā, we consider it to be inconclusive on either side, and that, consequently, so far as that evidence goes, the party who has affirmatively to prove his contention must fail. No doubt the witnesses for plaintiff and defendant alike established petty departures in detail from the strict ceremonial law of Mithilā, and this is not to be wondered at with pujāts, not remarkable for erudition in matters either sacred or profane, surrounded by a Bengal population, and having access for the most part only to Bengali books; it is only natural that, in minor observances and occasions Bengal innovations should creep in and is a departure of this kind rather than a disguise of the Mithilā rites, and adoption of those of Bengal which the witnesses for the plaintiff have proved, if they have proved any thing, it was amply enough observed by the respondent's Vakeel Baboo Kishen-kishore Ghose that families situated like that of the defendant commonly use the customs of Bengal for every day purposes, and produce the law of Mithilā for their law-suits. But whatever justice there may be generally in this remark, we are bound to say that nothing advanced by the plaintiff's witnesses is inconsistent with the view that this family
as far as its members were interested meant to keep up and did virtually keep up the customs and the law of the country in which they had originally resided.

It is admitted, however, on all hands, that if the plaintiff could show from the history of the family in recent times, that in such matters as marriage, adoption, inheritance and the like they had practically followed the law of Bengal, such proof would render the kind of evidence which we have been discussing of very inferior importance. We find, accordingly, in the second branch of evidence, that one example of conformity to the Bengal rule of succession is brought forward on the plaintiff's side. This is the inheritance of Su-bhadra, a childless widow, of the share of her husband Totar, who died in Pous 1232, the elder brother of Boidya-nath, from whom plaintiff and Nabindudar, supposing that his adoption stands, are both descended. This, it is admitted could not have taken place in a joint undivided Hindu family under the law of Mithilá. A fact so important of course demands investigation, and we find the proof of it consists in a decree of the Provincial Court of Moorshedabad, under date 19th of November, 1829, in which Mussammát Su-bhadra is set down as the widow and representative of Totar, deceased, who had been one of the original defendants. This appears to have been a suit connected with a Putnee Talook in which the Paul Chowdhry semindars were plaintiffs. The other defendant was Dina-moyi the widow of Chandí-char, and mother of Nil-kamal who represented Boidya-nath the younger brother of Totar who had died fourteen years earlier, and in accordance with this state of things, petitions dated the 30th of March 1827 and 8th of May 1833 had been filed as coming from Su-bhadra and Dinamoyi relative to the payment of rent for this Talook. It is to be observed that there was neither adjudication nor dispute upon this matter of succession. Now we are not disposed to think that the mere assumption by Su-bhadra of rights which, if the family were still in Mithilá, did not belong to her, would be in itself extremely important, unless it were shown that other heirs at that time existed whose rights were affected by her proceedings, and who were in a condition to resist. If this indeed were so, the silence of such heirs would be very significant. But we find the death of Totar took place in Pous 1232, just one month after that of his nephew and male heir, Chandí-char, when the grand-nephew and next heir of Nil-kamal, son of
Changči-chara, was a child in arms (born in 1231,) his mother Dinay-moyi being his guardian. Under these circumstances, nothing could be more probable than that Su-bhadra, having only a young widow to deal with, should assume the direction of her deceased husband's share in the family property, and continue in possession of it, until Nil-kamal came of age, and, as remarked by the appellant's Vakeel, there is no evidence of her possession after he attained his majority. That Su-bhadra was a woman of great influence in the family, and considerable vigour, is evident from the subsequent history of events, for we find her in the will, propounded as Nil-kamal's, associated with his wife Hingalé-moyi, and his mother Dinay-moyi (above mentioned,) in the management of his estate for the benefit of the son to be adopted by his wife. She finally outlived them both dying in 1258.

We cannot, therefore, look upon the alleged succession by Su-bhadra to her husband as being of itself conclusive as to the law which governed this family, and as we think the oral evidence insufficient, and thus find the plaintiff to have failed in supporting the burden of proof which the nature of the case has laid upon him, it follows that the first material issue is decided against the Plaintiff, Respondent; that this suit cannot proceed; and that the Judgment of the lower court in his favour must be reversed with all costs of this court and of the Court below.

Judgment reversed

CHAPTER III.

CHARGES ON THE INHERITANCE.

The charges to which the inheritance is liable, are of three kinds. First,—discharge of debts and other obligations. Secondly,—the performance of the obsequies, &c. of the late proprietor and the initiation of his son and daughter. Thirdly,—maintenance of such persons and such members of his family as are absolutely entitled to it. Those who take the heritage must discharge these duties.

SECTION I.—PAYMENT OF DEBTS, &c.

Vyavastha. 163. A partition should be made by sons of the wealth of their deceased father, which remains after discharging his debts.—Dá. kra. sang. pp. 110, 111.

Authority. What remains of the paternal inheritance (a) over and above the father's obligations and after payment of his debts, may be divided by the brethren; so that their father continue not a debtor (i).—Nárada. See Dá. bhá. p. 21.

(a) Here the term paternal is merely illustrative: it in general indicates the late owner of a heritage. Consequently,—

Vyavastha. 164. When an heir takes the inheritance of his paternal grandfather, uncle, or any one else, he must pay his debt.*

Authority. I. He who has received the estate of a proprietor leaving no son (competent to inherit) must pay (his) debts, or, on failure of him, the person who takes the wife (of the deceased;) but not the son whose (father's) assets are held by another.*—Jáonyavalkya. See Coleb. Dig. Vol. I. p. 278.

II. He, who takes the assets of a man leaving no male issue, must pay the sum due (by him.)—Vishnu. Ibid. p. 329.

III. A childless widow must pay the debt of her sister enjoining payment; or whoever receives the assets left by that sister, must pay her debts.—Nárada. Ibid. p. 323.

* The most general position respecting it is, that debts follow the assets into whose sorer hands they come.—Strange's H. L. Vol. I. p. 226.
165. Accordingly, of the mother’s wealth too, only what remains over and above her debts is to be divided.

Authority. Daughters share the residue of their mother’s property, after payment of her debts: and the male issue, in default of daughters.—Jāgyvalkya. Vide. Dā. bhā. p. 22.

(i) “So that their father continue not a debtor”—On this phrase Ragha-nandana remarks—that if they cannot (immediately pay the debts,) they must promise the creditor to pay it (at a subsequent time.)

(i) From the expression ‘So that the father continue not a debtor’—it appears, that the debts may be cleared off subsequent to the partition: otherwise it would be unmeaning. (Dā. Kra. sang. p. 111.) Consequently,—

166. Co-heirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts.—Dā. bhā. p. 22.

Authority. A father being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares,* or that son alone, who has taken the burden upon himself.—Nārada. See Coleb. Dig. Vol. 1. p. 275.

But even if the son did not inherit his father’s property, still it is his sacred obligation and moral duty to pay his debts; for,—“fathers desire male offspring for their own sake, (reflecting,) this son will redeem me from every debt whatsoever due to superior and inferior beings: therefore, a son, begotten by him, should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment. If a devout man, or one who maintained sacrificial fire, die a debtor, all the merit of his devout austerities, or of his perpetual fire, shall belong to his creditors.”—Nārada. “He, who, having received a sum lent or the like, does not repay it to the owner, will be born (hereafter) in his creditor’s house, a slave, a servant, a woman, or a quadruped.”—Vṛihaspati.

* For instance, if the debt of the father amount to a hundred suvarnas, (four brothers must severally declare,) “twenty five suvarnas thereof constitute a debt due from me.”—Coleb. Dig. Vol. III. p. 89.
In like manner, whatever the father had promised, whatever he had deposited, mortgaged, or whatever price he did not pay after purchasing (a thing,) all these should be discharged by the son. For, "promise made in words, but not performed in deed, is a debt (of conscience) both in this world and in the next. He who gives not what he has promised, and he who takes what he has given, sinks to various regions of torment, and springs again to birth from the womb of some brute animal"—Nārāda. "What a man has promised, in health or in sickness, for a religious purpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it."—Kātyāyana. Coleb. Dig. Vol. I. pp. 299—307.

However, "the sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration or under the influence of lust or wrath;* or sums for which he was a surety,† or a fine, or a toll, or the balance of either."—Vṛihaspati. "Money due by a surety,† a commercial demand, a toll, the price of spirituous liquors, a loss at play, and a fine, shall not involve the sons (of the debtor)."—Gotama. "Neither a fine, nor a toll, nor the balance due for either, shall be (necessarily) paid by the son of the debtor; nor any debt for a cause repugnant to good morals."—Vyāsa. "A son need not pay in this world money due by his father for spirituous liquors, for lustful pleasures, for losses at play; nor what remains unpaid of a fine or toll; nor any thing idly promised."—Jāgnyavalkya. Coleb. Dig. Vol. I. pp. 312—318.

Sons, while minors are not also under the religious obligation to pay their ancestors' debts, but it has been enjoined that they shall pay the same at their full age: otherwise, shall they be doomed to hell. Thus Kātyāyana:—"On the death of a father, his debt shall in no case be paid by his sons incapable from nonage of conducting their own affairs; but at their full age, they shall pay it in proportion to their shares: otherwise they shall dwell hereafter in a region of horror."‡—See Coleb. Dig. Vol. I. p. 298.

* What a man has promised, with or without a writing to give to a woman, but had another husband before, let the judge consider as a debt contracted under the influence of lust. But what has been promised to gratify resentment by hurting (another) destroying his property, let the judge consider as (a debt) incurred under the influence of wrath."—Kātyāyana. Coleb. Dig. Vol. I. p. 318.

† But see the foot-note at page 352. ‡ Vide, however, the, Chapter on mixed...
But in this country it is a settled point that,—

167. Assets are liable for the debts, and one is not legally bound to pay the debts of his ancestor or any relation unless he inherit his property.*

168. The heir of a deceased proprietor is liable for his debts to the extent of the property inherited.†

169. Where the property of a deceased debtor is inherited by several persons, each of them is bound to pay his debts in proportion only to the property received.‡

170. If a person after contracting a debt remain abroad for twenty years (a), or be civiliter mortuus, his debt shall, after that period, be paid by his son, grandson, or the person who held his property.

Authority. I. A debt of the father being proved, it must be discharged by sons, even in his life-time, if he were blind from his birth, or be degraded, insane, or afflicted with phthisis or leprosy, or other hopeless disorder.—Vrihaspati.

II. The debts of men long absent in a foreign country, of idiots, mad men, and the like,† who have no male kindred, and of religious

* Much as is said everywhere of the religious tie the son is under to pay the debts of his ancestor, it seems settled at Bengal that it has no legal force independent of assets. Snranger’s Hindu law. Vol. I. p. 227.

“...If there be no property acquired by the father, and the whole estate were left by the paternal grandfather, since it became property of the father, his debts must be paid before partition can take place.” (Caleb. Dig. Vol. III. p. 87.) This must relate to the case where the father died after inheriting the grandfather’s property.

† Colebrooke, however, in his Treatise on Obligations and Contracts, (Ch. II. para. 51.) has laid it down that “heirs succeed to the obligations of ancestors without any reference to the inadequacy of the property, and the rights of inheritance must be relinquished, when its obligations are repudiated. Although this opinion of that eminent scholar is in accordance with the letter of the law, yet the practice is as mentioned in the Vyavastha”No. 167.

‡ The term ‘and the like’ comprehends the other persons incompetent to inherit. See the Chapter treating of exclusion from inheritance.
anchorets, must be paid, even during their lives, by such as have the
care of the (débtors') wives and goods—KÁTYÁYANA. Coleb. Dig. Vol.
I. pp. 286, 338.

**Authority.**

III. If he, who contracted the debt, should die, or become a religious anchoret or remain aboard for twenty years (a), that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will.—VISHNU. *Ibid.* p. 274.

IV. If the father be at home, but afflicted with a chronic disorder or live in a foreign land (a), his debt shall be paid by his sons after the lapse of twenty years.—KÁTYÁYANA.

(a). This must be understood when the return of the absent (parent) may be expected. But, when the return of the absent parent is impracticable, the son shall pay the debt of his father though living, as if he were dead. The creditor need not wait twenty years.

If no intelligence be received, during twelve years, concerning any man who has travelled to a foreign country, the law requires his son to perform obsequies and the like, presuming his death; if the son did not then pay the debt until twenty years had elapsed, that would be inconsistent with common sense, and with the reason of the law.—Coleb. Dig. Vol. I. pp. 285, 286.

**Vyavastha.**

171. If a person be incapacitated by extreme old age, or by chronic disease, his son or another who holds or manages his estate, must pay his debts.

**Authority.**

I. A creditor may enforce payment of such debts from the sons of his debtors, who, though alive, are incurably diseased, mad, or extremely aged (i), or have been very long in a foreign country, (provided the sons have assets of the debtor)—KÁTYÁYANA.

(ii) "Extremely aged"—that is incapacitated by old age for (the management of) affairs.—Coleb. Dig. Vol. I. p. 286.

II. "While the father lives, sons have no independent power in regard to the receipt, expenditure, and bailment of wealth. But, if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."—HÁRITA. "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business; partition of the
wealth does not take place, if the father be not desirous of it: when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease, let the eldest, like a father, protect the goods of the rest.”—SANKHA & LIKHITA. Coleb. Dá. bhá. pp. 19, 20.

III. “If the father be at home, but afflicted with a chronic disorder, or live in a foreign land, his debt shall be paid by his sons after a lapse of twenty years.”—KÁTYÁYANA. “A debt of the father being proved, it must be discharged by his sons, even in his life-time, if he were blind (or deaf) from his birth, or be degraded, insane, or afflicted with phthisis or leprosy or other hopeless disorder.”—VRIHASPATI. Ibid. pp. 285, 286.

**Vyavastha.** 172. Persons inheriting the grandfather's property by reason of their father's death, natural or civil, should first pay the just debts of the grandfather, and then the father's debts, provided there be assets.

**Vyavastha.** 173. And the persons inheriting the father's property should also pay the grandfather's debts but without interest.

Because in the first case, begotten by the father, they received that estate through him; and in the second, their father should have paid the debts of his father.

**Authority.**

I. The paternal grandfather's debts also ought to be paid.—This is declared by VRIHASPATI, KÁTYÁYANA, and NÁRADA:—“The father's debt must be first paid, and next a debt contracted by the man himself; but the debt of the paternal grandfather must even be paid before either of those.”—VRIHASPATI. “Bhrigu ordains that a debt, devolving from the grandfather, which was proved and acknowledged by the father, must be discharged by grandsons, if it were not contracted for immoral uses, nor (already) paid by the sons. A debt of the paternal grandfather, which is proved, or which is partly liquidated, must be discharged (by the grandson;) but never shall a debt, contracted for immoral uses, or which was contested by his father, be paid (by the grandson.) After the death of his father, debts (of his grandfather) must be carefully discharged by the grandson; but a debt contracted by an ancestor is not recoverable from the fourth in

---

* This must be understood when the care of the deceased is possible, or when the return of the absent (parent) may be expected. But when the distemper is deemed incurable or the return of the absent parent is impracticable, the son shall pay the debt of his father, though living as if he were dead. The creditor need not wait twenty years. Coleb. Dig. Vol. I. p. 285.
descent.”—Kátyávana. “An undisputed debt of the grandfather which has been successively due by him and his sons, but has remained undischarged by them, shall be paid by the grandsons; but it is not recoverable from a person, who is fourth (in descent from the debtor.”)—Nárada. Coleb. Dig. Vol. I., pp. 307—309.

II. In fact, debts of the paternal grandfather become debts of the father; they are chargeable on him in the first place; next on his son.—Ibid. Vol. III. p. 87.

III. If the son did not pay his father’s debt, the son’s son ought to pay it, because it became his father’s debt; where the debt did not descend so regularly, the great grandson ought not to pay if unwilling to do so.—Ibid.

IV. On failure of the father, who contracted the debt; that is, if he die, or be secluded from the world, or go to a foreign country; the debt must be paid by his sons with interest. It must be paid even by his son’s son (but) without interests. So said Vaihaspáti, Víshnu Jáignavalkya, and Kátyávana; “The sons must pay the debt of their father, when proved, as if it were their own; the son’s son must pay the debt of his grandfather, (but) without interest; and his son (or the great grandson) shall not be compelled to discharge it.”—Vaihaspáti. “If he, who contracted the debt, should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will.”—Víshnu. “The father being gone to a foreign country, or deceased (naturally or civilly) or wholly involved in distress, the sons or their sons, must pay the debt; but, if disputed, it must be proved by witnesses.”—Jáignavalkya. “The rule shall be the same in regard to the debts of the grandfather, which have not been discharged by (other) grandsons, nor by his (own) sons; but a debt of the grandfather shall be paid by his grandsons without interest.”—Kátyávana. See Coleb. Dig. Vol. I. pp. 273—320.

Vyavastha’. 174. The great grandson of the original debtor shall not be compelled to pay his debts, unless he take the assets.—Coleb. Dig. Vol. III. p. 87.

Authority. I. In what circumstances is he considered as holding the assets: Is it only when he becomes the (immediate) heir of his ancestor, who has survived his own son and grandson?
VYAVASTHA-DARPANA.

Or (is he) likewise (considered as such) when the son succeeded to the estate on the death of the proprietor, and after him the grandson; and on his demise the great grandson; The answer is, when the estate of the ancestor passes successively to his son, grandson, and great grandson, this last is not the (immediate) heir of his grandfather, but of his own father. But he, who succeeds to the estate of another in right of his relation to him, is considered as holding assets of that person.—Coleb. Dig. Vol. III. pp. 87, 88.

175. If a person, after dividing his estate and debts amongst his sons, be separate from them taking his portion, and beget, another son, then the son begotten after partition shall inherit the father’s property both reserved and subsequently acquired, and pay his debts.*

Reason. The sons born before partition being responsible for no more of the debts than the portions undertaken by them in partition.*

Authority. A son born before partition has no claim on the paternal estate, nor a son born after it on the portion of his brother, whether in respect of property or debts; nor have they any claims on each other except to purification and oblation of water (if either of them die),*—Vrihaspati. Coleb. Dig. Vol. I. p. 287.

VYAVASTHA. 176. Suretiship is ordained for appearance, for honesty, and for payment; the two first (sureties, and not their sons,) must pay the debt, on failure of their engagements, but even the sons of the last (may be compelled to pay it.)†—Jaṅgyavalka. Coleb. Dig. Vol. I. p. 246.

Legal opinions delivered in, and admitted by, several courts of judicature, and selected and approved of by Sir William Macnaghten.

Q. A person died involved in debt, leaving some property, but not sufficient to answer all legal demands. His three minor sons and his

* See the section treating of the son begotten after partition.
† Vide Manu, Ch. VIII. ss. 158, 160, 161, and 162. See also the note under page 358.
widow took possession of the assets of the deceased's estate. In this case, are the individuals in question bound to liquidate the debts contracted by him?

The heirs who take the assets, are bound to discharge the debts of the deceased.

R. If the assets of the estate of the father have been taken by the widow of the deceased and his sons, they are bound to pay his debts. It is incumbent on a son to exonerate his father by liquidating his debts, and this should be done before any partition of the paternal estate among the sons. The minor sons cannot exercise any power over the patrimony until they come of age, but then the liquidation of the father's debts becomes incumbent on them also. If the widow succeed to the estate, she should discharge the debts; but if the amount of the debt be larger than the property is capable of satisfying, the whole property which the deceased left must be given to the creditors, and then his heirs must be considered as absolved also from all claims.


Q. A creditor, on the death of a debtor, sues his heirs, namely, his widow and brother; but it is not conditioned in the bond that the debtor's heirs and representatives shall discharge the debt. In this case, are the heirs of the debtor bound to liquidate that debt or not?

The heir who takes the assets of a deceased debtor, must satisfy his creditors, as far as the assets go.

R. If the deceased debtor should have _boná fide_ borrowed the sum mentioned in the obligation, his widow must fulfil the conditions, provided she was a party to the contract, or promised to discharge the debt, or provided she received his assets, even though there be no mention of the heir's responsibility for the payment. If one of the associated brothers contract debts for the support of the joint family, the other parcerners must discharge them. This opinion is consonant to law.

Zillah Jessore.—Macn. H. L. Vol. II. Ch. 10, case 6 (p. 283.)

Q. A person died, leaving a widow, who succeeded to his estate subject to the law which allows her only to enjoy the property with moderation until her death, but not to give or sell it; and having
contracted a debt either to save the property left by her husband or for other purposes, died without liquidating such debt, leaving her husband's brother and brother's son claimants to the property. Her husband's brother took possession of the property, and the other brother's son obtained a decree for a moiety of the same. In this case, will the liquidation of the debt rest with the brother and the brother's son of her husband?

R. Supposing the proprietor's widow, who succeeded him, to have contracted the debt for the payment of rent due to Government, or other necessary disbursements, to save the estate, or for the purpose of promoting her husband's spiritual welfare, or for the support of the family, or for due execution of any conditions made by her husband, and to have died prior to the liquidation of such debt, the proprietor's heirs, that is, his brother and brother's son, are bound to discharge the debt. And if the amount was borrowed for the purpose of being appropriated to any other purposes than those specified, such debt must be satisfied by him who becomes possessed of her jewels and other movable property. This opinion is conformable to the Déya-bhága, Mitákshará, Viváda-chintá-maṇi, Dípa-kaliká, and other legal authorities.

Authorities:

The text of Nárada cited in the Déya-bhága. See ante p. 342.

The necessity of liquidating the debt is recognised by the text of Goutama cited in the Mitákshará:—"He who takes the assets of a man leaving no male issue, must pay the sum due by him;" and by the text of Vrihaspati laid down in the Viváda-chintá-maṇi:—"A father being dead, his sons, whether after partition or before it, shall discharge his debt, in proportion to their shares; or that son alone, who has taken the burthen upon himself."*

Manu cited in the Dípa-kaliká:—"If the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by the family, divided or undivided, out of their own estate." By the term "father," mentioned in all the texts, must be understood the father and others.

*This is not a text of Vrihaspati but of Nárada. Vide Coleb. Dig. Vol. I. Page 275.
The debts which are not chargeable are noticed in the *Vivāda-chintā-maṇi* :—"A son need not pay in this world money due by his father for spirituous liquors, for lustful pleasures, for loss at play; nor what remains unpaid of a fine or toll; nor any thing idly promised."

Dacca Court of Appeal. May 29th, 1830.—Macn. H. L. Vol. II. Ch. 10, Case 7 (pp. 283—285.)

Q. A *Shādra* became surety for a person of his own class, to whom a sum of money had been lent, and died previously to the liquidation of the debt. In this case, is the creditor entitled to realize the debt out of the deceased surety's property?

R. The creditor cannot realize his debt out of the deceased surety's property, even though payments should not have been made by the debtor. This is the received opinion.*

Zillah Chittagong, September 25th, 1820.—M. H. L. Vol. II. Ch. 10. Case 8 (p. 285.)

Q. A person having borrowed a sum of money, established a shop with the said money, and then died; subsequently to his death, his father and brothers appropriated all the goods that were in the shop. In this case, is the satisfaction of the debt, contracted by the deceased incumbent on his father and brothers, or not? and supposing the debtor to have left a widow, who took no part of the property left in the shop, is she nevertheless responsible for his debt, or otherwise?

---

* It is not distinctly stated what description of surety was meant, though from the terms of the question it may be apprehended that security for the loan was intended. Supposing this to be the case, the heirs are answerable, and the reply to the question is erroneous. According to the Hindu law, there are three sorts of accessory obligations, the *Pratyaya-pratībhā*, *Dīma-pratībhā*, and *Dorshana-pratībhā*. The first signifies a security for the purpose of confidence, and his undertaking is that which has been described by Mr. Colebrooke as a mandate, or precedent undertaking of a mandant, for another's benefit, bidding one trust another, lend him money, allow him credit, manage business for him, or become answerable for his default." The second is that which he terms "constitute, or subsequent undertaking of a person, who engages to pay a subsisting debt, or fulfils an existing obligation of a third party."—Colebrooke Obl. and Cont. Chap. X. Section 282. It signifies a surety for payment. The third signifies a surety for appearance, and answers to the Persian term *Hāsīr-nāmīn*, the obligor undertaking to produce the person of the principal, in the event of his not being forth-coming. In the first and last mentioned sorts of engagement, the death of the contracted party extinguishes the obligation; but in the second case, the obligation devolves on the representatives of the deceased surety.—See Colebrooke, cited in Stange's *Hindu Law*. Appendix X. pp. 463, 464.
Those who take the property of the deceased are bound to liquidate his debt.

R. Under the circumstances stated, the debtor's father and brothers are bound to liquidate his debt, but his widow cannot be held liable for it.

Authorities:

The text of Jānyavālaya, cited in the Mitākṣharā and other books of law:—"If one of two or more parencers or undivided kinsmen contract a debt for the support of his family, and either die, or be very long absent abroad, the other parencers or joint tenants shall pay it."

Macn. H. L. Vol. II. Ch. X, Case 10, (pp. 286, 287.)

Q. A person having contracted a debt, becomes a recluse; that is, enters into the order of an ascetic. His ancestral landed property falls into the hands of his brother's representatives. In this case, can the creditor realise his debt out of such property?

R. If the individual in question borrowed a sum of money, and relinquished the order of a house-keeper leaving a patrimonial immovable estate in the possession of his relatives, in this case, those relatives who are in the enjoyment of his property are liable for the debt, and if they do not liquidate it, the creditor is competent to recover his money due from the debtor out of his property, as Jānyavālaya propounds: "He who has received the estate of a proprietor leaving no son capable of business, must pay the debts of the estate, or, on failure of him, the person who takes the wife of the deceased; but not the son whose father's assets are held by another."

The law on this subject is more distinctly laid down in the Mitākṣharā and other authorities, in the chapter treating of the payment of debts.

City Chinsurah, June 13th, 1815.—Macn. H. L. Vol. II. Ch. X, case 12 (pp. 288, 289.)

Q. A man, living with his brothers as a joint and undivided family, borrowed a certain sum of money, and executed a bond, obliging himself to pay the debts by instalments. He (the debtor) proceeded to a distant country without liquidating the debt, while the family was undivided, and for the period of nine years no intelligence of him has been received. Now the debtor's brothers and wife are in the joint
enjoyment of the family property, movable and immovable. In this case, can the creditor claim payment of his debt from the occupiers of the debtor’s estate, or must the claim be deferred until the expiration of twelve years from the date on which the debtor departed from his family house?

R. If a man contract a debt while he lives with his brothers, as an undivided and united family, and subsequently become missing, the debtor’s wife and brothers who possess his estate must pay his debts, without waiting for the expiration of twelve years.

Authorities:—

The texts of Jāgnyavalkya cited at page 353.

Nārada:—“A debt contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parceners or joint tenants shall discharge.”

“The creditor need not wait a specific time; for there is no authority (for such a supposition.”)—Ibid.

Zillah Tipperah, July 16th, 1812.—Macn. H. L. Vol. II. Ch. X, Case 5, (p. 282.)

Cases

A Hindu possessing himself of the land of his father is bound to pay his debts.—Jamuna Raur versus Muddun Day.—20th of January, 1875. Hyde’s Notes. S. C. R. 143.

II. Baranussy Ghose versus Ram-tunnoo Dutt and others.—20th November, 1788.—Chambers’ Notes, S. C. R. 144.

Case no. 761 of 1858.


Case

The plaintiff, petitioner, sued the defendant Tárá-sundari, to recover the amount of a debt due by Kanak-mañi, to whose personal property, it was alleged, Tárá-sundari, her daughter, had succeeded.
The Moonsif gave a decree for the plaintiff against the effects of the deceased Kanak-maṇi, and an appeal was preferred by the plaintiff to make Tārā-sundarī also answerable in her own effects for the amount of the debt. The Judge gave a decree in accordance with the prayer of the plaintiff, appellant. A special appeal was filed by Tārā-sundarī.

That the debts for which the present suit was brought was a personal one of Kanak-maṇi is not questioned. It seems clear, then, that the persons who succeed to the property of Kunak-maṇi Debi, and those only, are liable for the debts, to the extent of property acquired from the deceased. Under these circumstances, a satisfactory decision can not be come to in the present case, until it is clearly determined whether Tārā-sundarī by will or otherwise, (for by inheritance she could not succeed,) acquired any property from the deceased Kanak-maṇi or not?

With a view of elucidating this point, as Tārā-sundarī and Kanak-maṇi lived in the same house, the circumstances under which the property belonging to Kanak-maṇi after her death came, if it did come, into Tārā-sundarī’s possession, should be inquired into. Was it for the simple custody, in which case she would not be liable, or any acts regarding that property evidencing appropriation done by Tārā-sundarī, rendering her liable in an action like the present; and again, what property was forcibly taken from Tārā-sundarī by her brother, to whom did it belong, was it the peculiar property of Kanak-maṇi, or did it belong to her deceased husband and their father, Kishori-gobind, and on what plea was it forcibly taken from her after the death of Kanak-maṇi, should also be ascertained.

On these facts being clearly answered one way or the other, the Court below will then be in a position to say whether looking to the relation between Tārā-sundarī and Kanak-maṇi, any property belonging to the latter came into the possession of the former in such a mode as to render her liable. If any such came, a decree may pass against Tārā-sundarī Debi, only to the extent of any property so acquired by her, for notwithstanding that the payment of all the debts due by an ancestor is incumbent on an heir as moral duty under Hindu law, it is not enforced as a legal obligation by our courts. If none such came, she should be released from liability.

The case is remitted to the Judge for investigation on the points above noticed.—The 26th of May 1859.—S. S. A. D. p. 657.
CASE No. 248 OF 1854.

Doyá-moyi Debi (Plaintiff,) Appellant, versus Brindában-chander Banerjea and others (Defendants,) Respondents.

This was a suit for recovery of the amount of a bond debt.

The Moonsiff decreed the amount claimed, making the heirs of the borrower liable. In appeal the officiating Judge amended the decree disallowing interest previous to the date of the decision, on the ground that more than the legal interest was entered in the bond. He also directed, that the money due should be recovered from the property left by the deceased borrower.

The application is on the ground of these amendments. With the first we see no reason to interfere, but we think it questionable whether the Judge should decree the property left by the deceased only liable, as the defendants were sued as his heirs, and did not deny their succession, although they disputed the claim. We admit the special appeal to try whether the Judge was not wrong in thus exempting the defendants from personal liability, and whether therefore this decision should not be amended in this particular?

JUDGMENT.—

We see no impropriety in confining the responsibility of the heirs of the deceased borrower to the extent of the property acquired by them, as his estate on his death; but the Judge erred in so passing an order, that the plaintiff should have his recourse against the deceased’s property, and not against the defendants who acquired the property; we so amend the decree with costs.—The 20th of February, 1856.—S. D. A. D. p. 97.

ON THE PAYMENT OF DEBTS CONTRACTED FOR THE FAMILY.

Vyavastha. 177. A debt contracted by one member of an undivided family, for the sake of the same, is payable by all the co-parceners, or out of their estate.

Authority. A debt contracted before partition by an uncle, or brother, or a mother, for the sake of the family (u), all

(u) 'For the sake of the family'—that is, for its support, for the funeral obsequies of its members, nuptials of girls, and other necessary acts.*—See the text of Káttáyána cited at page 358.

178. If one of undivided kinsmen contract a debt for the use of the family, and either die or be very long absent abroad, the other parceners or joint tenants shall pay the same.

REMARK. The term 'Kutumbárthe' which is composed of 'Kutumb' (family) and arthe (for or for the sake of) is used in many texts on the above subject. Mr. Colebrooke in his Digest has sometimes translated it by 'for the support of the family' (1), sometimes by 'for the use of the family' (2), sometimes by 'for the behoof of the family' (3), and sometimes by 'for the benefit of the family' (4) and in doing so he seems to have followed Jagan-nátha whose compilation is the original of his Digest. Sir William Jones, in one text of Manu, translates it by 'for the use of the family' (5), and in another by 'for the behoof of the family' (6) without following the Commentator Káttáka Bhatta, who in one text (5) has interpreted it Kutumba-sam-badhanártham (for the support of the family,) and in another by 'Kutumba-bhaya-nimittam (for the expenses of the family.)' With due deference to the two great translators, I have deemed it best to render the term 'Kutumbárthe' all along by 'for the sake of the family,' a signification consistent with the component parts of the original, and most accurate of all, and which has been afterwards adopted by Mr. Colebrooke himself in his translation of the Mitáksharā (7.)

Authority. I. If one of undivided kinsmen contract a debt for the sake of his family, and either die or be very long

* The expense attending them must have been reasonable according to the usage and means of the family. Contracted fairly for the use of the family, by whatever member of it not forbidden, it binds the whole.—Strange's Book on the Hindu Law, Vol. I. p. 297.

(1) Jágyavalkya, Nárada, & Vrihaspati. 1 Dig. pp. 290, 292, 301 306, 321.
(2) Nárada, Ibid. p. 302.
(3) Káttáyána and Jágyavalkya. Ibid. pp. 302, 320, 327.
(4) Káttáyána, Ibid. p. 303.
(5) Manu. Ch. VIII. v. 166.
(6) Manu. Ch. VIII. v. 167.
(7) Nárada, Mitáksharā, p. 257.
absent abroad, the other parceners or joint-tenants shall pay it.—Jayavalkya.—Coleb. Dig. Vol. I. p. 290.

II. If the debtor be dead (a,) and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate.—Manu.

(a) The word "dead" is illustrative (of civil death and the like.) Ibid. p. 297.

Vyavastha. 179. A debt, contracted by undivided parceners shall be paid by any one of them, who is present and amenable; and so shall the debt of the father by (any one of) the brothers before partition, but, after partition they shall severally pay according to their shares of the inheritance.—Vishnu. Ibid. p. 296.

Vyavastha. 180. What has been borrowed for the sake of the family, or during distress while (the principal) was disabled, seized (by the king,) or afflicted with disease, or in consequence of a foreign invasion, or for the nuptials of his daughter, or funeral rites; all such debts contracted by (one of) the family, must be discharged by 'the chief (of that family.)—Katya. Ibid. p. 303.

The chief of the family being disabled, a debt, contracted by any person connected with him for the support of that family, for guarding against the violence of a king, for the cure of a distemper, for relief from a general calamity, for the celebration of a daughter's nuptials, or for the performance of obsequies for a parent or the like, must be paid by that chief of the family. Such is the sense.*

It is illustrative of a general meaning, and intends any debt contracted for the accomplishment of some business, which being omitted even in consequence of poverty, sin or calamity must ensue.*

The principle of the law should be noticed: in the case of a daughter's nuptials, for so much expense only, as preserves from infraction of the usage of the principal's family, may another contract debts; not

for the celebration of splendid nuptials: the whole of what is
borrowed for unauthorised expenses, must be paid by the borrower; but
expenses which are suitable to the usage of his family, must necessarily
be admitted by a master able to discharge them.*

Should he be seized with a distemper, or unwarily go to a foreign
land, a debt may be contracted by any person connected (with him,)
to defray the expenses required for such a purpose, as estimated by
five persons.†

**Vyavastha**. 281. A debt contracted for the sake of the
family, by any person whomsoever connected
with that family, must be paid by the head of the family, even
if it were without his consent.

**Authority.**  I. A (debt of which payment has been previously
promised,) or which was contracted by any person
for the sake of the family, must be paid by the house-keeper.*

**Vishnu.**

(o) "A debt" must be here supplied.

II. Whatever debt has been contracted for the sake of the family
by a pupil, an apprentice, a slave, a wife, or an agent, must be paid
by the head of the family.†—NáRADA.

III. Bhrigu ordained, that a man shall pay a debt contracted in
his remote absence, even without his assent, by his servant, his wife,
his mother, his pupil, or his son: (provided it were contracted for the

IV. A housekeeper shall discharge a debt contracted by his uncle,
brother, son, wife, servant, pupil, or dependants, for the sake of the
family (during his absence.)†—VrihásPati.

The meaning therefore is, that, since the terms conclude in the
plural number, which conveys the sense of 'and the like;' (therefore)
maternal uncles and the rest, as well as other persons, are comprehen-
ded in the text.†

The principle of the law may be here stated: should a son compe-
tent to affairs be at hand, a debt, contracted by divided brethren or

---

the like unauthorised by him, is not valid: but, in the case of partners, if any one of five brothers forbids the contracting of the debt, and is able to support the family by other means, the debt contracted by another brother, is due by the borrower alone, and shall not be paid by him who opposed the debt. Yet, if the money (so) borrowed be used by him who opposed the debt, or by his dependant, being unable to supply sufficient funds for the support of the whole family, or of his immediate dependants, it must be discharged by him.*

V. A father must equally pay the debt of his son, contracted either by his own appointment, or for the support of his family, or in a time of distress.*—Nārāda.

Vyavastha. 182. The debt incurred by a slave† for the support of the family of his master, while in a foreign country, or elsewhere, must be entirely discharged by the master.—Dd. Kra. Sang. p. 126.

Authority. Should even a slave† make a contract (a) in the name of his absent master) for the sake of the family, that master, whether in his own country or abroad, shall not resiend it.—Manu. (a) Contract—debt, &c.

Vyavastha. 183. Neither shall a wife or mother (be in general compelled to) pay a debt contracted by her husband or son, nor a father (to pay a debt) contracted by his son, unless it were for the sake of the family; nor the husband to pay a debt contracted by his wife.—Jāgnyāvakya.

Vyavastha. 184. A debt, contracted by the wife, shall by no means bind the husband, unless it were (for necessaries) at a time of great distress: a man is indispensably bound to support his family.—Nārāda.

† Slaves are of fifteen descriptions, and are thus described by Nārāda: “One born (of a female slave) in the house of her master; one bought, one received (by donation;) one inherited; one maintained in a famine; one pledged by a former master; one relieved from a great debt; one made captive in war; a slave won in a stake; one who has offered himself in this form, “I am thine;” an apostate from religious mendicity; a slave for a stipulated time; one maintained in consideration of service; a slave for the sake of his bride; and one self sold; are fifteen slaves declared by law.”—Dd. Kra. Sang. p. 127.
**Legal opinions delivered in, and admitted by, several Courts of Judicature, and examined and approved of by Sir William Macnaghten.**

**Q.** A father with his five sons lived jointly in respect of food and in the conduct of mercantile affairs. One of the sons contracted a debt for his own private use, and not on account of the joint concern. On the expiration of the period agreed upon for the discharge of the debt, the creditor brought an action against the debtor, who subsequently died before his father and four brothers, leaving a widow. The father and brothers of the deceased are enjoying the joint property. In this case, should the debt be liquidated out of the joint funds of the concern?

**R.** Supposing the debtor, living with his father and brothers as a joint family, and having joint dealings with them, to have contracted the debt for his private use,* and that the produce of the land or other estate purchased with the sum borrowed was expended for the use of the joint family or joint trade, then the father and brothers, who jointly possess the ancestral and acquired property, should liquidate the debt.

Zillah Jungle-mehauls, May 7th, 1822.—Macn. H. L. Vol. II. Chap. X. Case 3 (pp. 279, 280.)

**Q.** A married woman, having borrowed some money from a stranger, appropriated the sum so borrowed to defray the expenses of an action instituted by her for the recovery of her husband’s property, and obtained a decree for the same in a court of justice. She executed a bond in favour of the lender for the sum borrowed, conditioning that “her husband should make over to him possession of the property for which she had obtained a decree in her own name, in the event of non-payment of the money borrowed by means of which it had been recovered.” When this bond was executed, her husband was absent. Subsequently the lender, in virtue of the bond, brought

---

* This appears to be only half an answer to the query; for it is unquestionable that the brothers who took the estate are liable for the debts, as far as their may be assets, whether the money was borrowed by the deceased brother for his private use alone, or was expended for the benefit of the family at large.
an action against the borrower of the money, and against her husband, the possessor of the property specified in the bond. The borrower, in her reply to the plaint, acknowledged her execution of the bond, and her receipt of the money, but pleaded that the property in question was in her husband’s possession; and the other defendant answered by a total denial of the claim, and stated, that his wife had formed a connection with the plaintiff, in consequence of which he had, previously to the institution of this suit, filed a complaint against the plaintiff in the Foutdaree court; that the Magistrate had passed a decision in his favour, ordering his wife to be delivered up to him; and that she was conspiring with the plaintiff to defraud him of his lawful property. In this case, according to law, will the liquidation of the debt be incumbent both on the borrower and on her husband jointly, or only on the former?

When a wife manages her husband’s affairs, he is liable for the debts she contracts. R. It is laid down in the Mitákshará and other authorities, that when a wife, who, with the consent of her husband, assumes the management of his family affairs, contracts a debt, the liquidation of such debt rests with the husband; otherwise he is not answerable for it.

Zillah Moradabad. August 24th, 1810.

*Buksheeram* versus *Musst. Durboo and another*. Macn. H. L. Vol. II. Ch. X, Case 4. (pp. 280, 281.)
SECTION II.

OBSEQUIES, &c. OF THE LATE PROPRIETOR
MUST BE PERFORMED.

Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of alms and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly VRIHASPATI says: "Of the property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner, to defray the charges of his monthly, six-monthly, and annual obsequies."* By saying "To defray the charges of his monthly, &c. obsequies," his participation, and by directing "Religious purposes," his spiritual benefit, are stated as reasons. So APASTAMBHA ordains: "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased."† Consequently,

**Vyavastha**. 185. He who takes the estate of the deceased, shall perform his obsequies.‡

**Authority.**

I. A brother, a brother's son, a sapinda, or a pupil, performing rites with a funeral cake for the deceased, shall thence obtain increase (of prosperity.†)—VRIHASPATI.

II. He who takes the estate shall perform the obsequies.—SMRITI.

**Vyavastha.** 186. But if one be heir to the estate, and another be qualified to perform the Shrāddha, (o) he must give sufficient property and cause the rites to be celebrated by him who is qualified to perform them.‡

(o) The word "Shrāddha" here signifies the obsequies performed after the death of a person.†

**Remark.**

How can the spiritual preceptor, who takes the estate of a Kshatriya, perform his funeral rites, since that is forbidden in the text:—"The priest who performs funeral rites for

---

* See ante, p. 57. † Dārika, bhā. p. 216. ‡ Coleb. Dig. Vol. III. pp. 545,546.
persons of an inferior tribe is degraded to that class in the present world and in the next? No; for this text relates to brothers unequal in class: and the difficulty is obviated by saying, that the spiritual preceptor may accomplish the funeral rites by the intervention of a qualified person equal in class with the deceased.*

* Coleb. Dig. Vol. III. pp. 545, 546,

If, in consequence of the heir of a deceased proprietor being in a different country there be a probability of loss of the deceased’s estate, then for his religious merit and spiritual benefit, any one can, with propriety, spend the money left by him, inasmuch as, according to this text of NĀRADA: “Whoever willingly performs the obsequies of, and religious rites for, a deceased, he also is held to be a substitute for the person, on whom it was incumbent to perform them. This has been fully laid down in the Shuddhi-tattvas. The author of the Dāya-bhāga, by saying that the estate of a deceased proprietor should in every instance be applied to religious purposes for the benefit of the deceased, has laid down the same thing.—Dāya-tattva, Sams. p. 63.
VYAVASTHA-DARPANA.

SECTION III.

INITIATION OF THE LATE OWNER'S SON AND DAUGHTER.

187. The initiatory ceremonies of the uninitiated brother and sister must be performed out of the patrimony.

Authority. I. For any of the brothers, whose investiture and other ceremonies have not been performed, the other brothers, of whom the sacraments have already been completed, shall perform those ceremonies (at the expense of the paternal estate;) and for (unmarried) sisters, the sacraments shall be completed by their elder brothers, as the law requires.—Vyāsa. Coleb. Dig. Vol. I. pp. 96, 97.

II. For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers (a) shall perform them out of the collected wealth of the father.*—Vṛihaspāti.

III. For those, whose forms of initiation have not been regularly performed by the father, these ceremones must be completed by the brethren out of the patrimony’’.*—Nārada.

(a) ‘Elder brothers’,—that is, those elder brothers of whom the sacraments have been completed. By the term ‘out of the collected wealth of the father,’ it is meant that the ceremonies must be performed out of the estate of the father in which both elder and younger brothers have interest. Consequently all the brothers, whether elder or younger, whether their sacraments have or have not been completed, shall contribute money for the ceremony (to be performed.*)

VYAVASTHA. 188. The marriage and other ceremonies of unmarried daughters must be defrayed in proportion to the wealth (inherited.*)—Vishnu.—Dā. T. p. 19-

Thus also Jāgnyatākṣya :—“ Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment a fourth part of a brother’s own share.” The text which or-
VYAVASTHA-DARPANA.

dains the allotment of a fourth part (to the unmarried sisters) intends
the appropriation of a sufficient sum for the nuptial ceremony (Di.
T. p. 19,) as is plainly declared by Devala: "A nuptial portion
shall be given to (unmarried) daughters out of their father's estate."

189. Authors consider the portion assigned
as intendent only for indispensable sacraments.

Authority. The sacraments or initiatory ceremonies that must
be performed by brothers are as follows:—Jūt-
karma (1,) Nāma-karaṇa (2,) Nīsh-kramaṇa (3,) Anna-prāshana (4,)
Chārā-karaṇa (5,) Upanayana (6,) and Vivāha (marriage.)

Remarks.—All of these ceremonies, however, concern men of twice-
born classes: they do not concern men of the fourth class. i. e. the
Śhādras.

Marriage is the only sacrament for a man of the servile (i. e. Śhādra)
class. Thus Brāhma-purāṇa: "A man of the servile class universally
(e) obtains marriage as his only sacrament."

(e) The word "universally" denotes that marriage alone is constant-
ly required.

It should, however, be observed, that to acquire the rank of Sat (pure)
Śhādra, it is necessary for the offspring of a respectable Śhādra to
perform the tonsure and other ceremonies.

Vyavastha. 190. However, brothers and sisters only, and
not their children, are entitled to be initiated
out of the undivided paternal wealth.†

(1) A ceremony ordained on the birth of a male, before the section of the naval string,
and which consists in making him test clarified butter out of a golden spoon.

(2) Ceremony of giving a name, performed on the eleventh, twelfth, or even the hundred
and first day.

(3) Carrying the child out of the house to see the moon, on the third lunar day of the
third light fortnight from his birth; or to see the sun in the third or fourth month.

(4) Feeding the child with rice in the sixth or eighth month, or when he has cut teeth

(5) The ceremony of tonsure, performed in the second or third year after birth.

(6) Investiture with the mark of the class, that is the sacred thread, performed in the
eighth year from the conception of a Brāhmaṇa; but it may be anticipated in the fifth, or
be delayed to the sixteenth year. See the section treating of the age of an adopted son.

* Coleb. Dig. Vol. III. pages 95 and 100.
† Strange's Hindu law, Vol. i. page 230; and Vol. II. p. 359.
191. The Shrāddha, &c. of the late proprietor and the initiatory (nuptial) ceremony of his daughter should be provided out of the inheritance where it has descended to a single heir.*

192. If there be no patrimony, they (the brothers) should perform the initiatory ceremonies with their own funds.†

**Authority.** If no wealth of the father exist, the ceremonies must without failure be defrayed by brothers already initiated, contributing funds out of their own portions.†—Nārada.

SECTION IV.
ON MAINTENANCE.

Although the law, as current in Bengal, ordains that that relative who, by presentation of oblations confers the greatest benefit on the deceased proprietor, is entitled to inherit his estate, yet so anxiously careful has the law been that there shall exist no ultimate distress in the dependant members of his family, while means exist to prevent it, that is, it declares such persons to be entitled to maintenance out of his estate.*

Persons entitled to maintenance are of two classes:—I. Those whom the deceased proprietor was bound to support, (and who with a few exceptions are included in the series of heirs.) II. Those who would have succeeded together with the inheritor, had they been free from that fault or defect for which one is excluded from inheritance, or had they not been barred by custom.

The claims of the first class of dependant members of the family of the deceased proprietor are grounded on the humane provisions of the law promulgated by Manu and some other sages. Thus:—

"Manu declared that a mother and father, in their old age, a virtuous wife, and an infant son must be maintained even by the commission of a hundred offences."

* "Maintenance by a man of his dependants is with the Hindus a primary duty. They hold, that he must be just before he is generous, his charity beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his children the objects, co-extensive as it is with his family, whatever be its number, as consisting of other relations and connections, including (it may be) illegitimate offspring. It extends (according to Manu and Jaina). Vaidika) to the outcast, if not to the adulterous wife, not to mention such as are excluded from the inheritance, whether through their faults or their misfortune; all being entitled to be maintained with food and raiment. A benevolent injection, existing at no time ever to the same extent under our own law; which professes little of the kind, since the time that it has been competent with us for a man to dispose by will of the whole of his property, real and personal, without regard to the natural claims of wife and issue, to say nothing of more distant ties; a latitude, not approved by the author of the Commentaries, (Blackstone) who, in noticing the power of the parent so to disinherit his children, thought it had not been amiss, if he had been bound to leave them at least a necessary subsistence; or, as the same sentiment has been expressed, in their peculiar manner, by the highest Hindu authorities, "who leaves his family naked and unfed, may taste honey at first, but shall afterwards find it poison."—St. H. L. Vol. 1. 98.
"The support of persons who should be maintained is the approved means of attaining heaven, but hell is the man's portion if they suffer."—*Manu*.

"He who bestows gifts (on strangers with a view to worldly fame,) while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison: such virtue is counterfeit."—*Manu*.

"Even what he does for the sake of his future spiritual body, to the injury of those whom he is bound to maintain, shall bring him ultimate misery, both in this life and in the next."—*Manu*.

"A man may give what remains after food and raiment for his family; the giver of more, who leaves his family naked and unfed, may taste honey first, but shall afterwards find it poison."—*Vrihaspati*.

"Maintenance of the family is an indispensable obligation."—*Dā*. bādd. p. 29.

From these it follows that the support of the family was an indispensable obligation on the late proprietor and is just such on his heir and successor, since he (or she) takes the estate not for his (or her) own benefit, but for the spiritual benefit of the late proprietor; and the act by which the greatest benefit can be conferred on the deceased is the support of his family, without which even sacrifice (performed for him) is a mockery, and he is doomed to hell.

Further,—"The wealth of the deceased proprietor should be applied to his spiritual benefit."—From such declaration of *Jimūta-vāhana*; it is clear that the heir who takes his estate takes it subject to the maintenance of his family and the performance of other acts beneficial to his soul; and that if he neglect to do so, he frustrates the intention of the law. Now it is the province of the Ruling power to compel the inheritor, if neglectful of his duties, to adhere to the law in its substance.

---

* This text is not to be found in the printed copy of *Manu*’s Institutes: it is however, cited here on the authority of *Jimūta-vāhana* and *Sri-kṛṣṇa Turāśānanda*, which is much respected in Bengal.


The dependant members, above alluded to, are the father and mother, where they cannot take as heirs, step-mother, grandmother, son's widow, the daughter and sister, not otherwise provided for, and others.*

Vyavastha. 193. These have claims to be maintained out of the late proprietor's estate.

Vyavastha. 194. The unmarried sister and daughter have moreover claims to receive from the deceased's estate the expenses of their marriage.†

Vyavastha. 195. The wife, if forsaken or expelled without a just cause, must get maintenance from her husband during his life, and out of his estate since his death.

Vyavastha. 196. Separate maintenance should be allowed to those who for a just cause could not live in, and mess with, the family.

Vyavastha. 197. The amount of maintenance should be fixed with reference to the proprietor's estate.

Vyavastha. 198. If means allow, not only food and raiment should be supplied, but also an amount should be assigned for necessary and religious expenses.

Vyavastha. 199. Should a woman without unchaste purposes quit the family-house and live with her parents or other relations, yet still she is entitled to maintenance.

Vyavastha. 200. The widow, however, is not entitled to maintenance by residing elsewhere without a just cause, if she was directed by her husband to be maintained in the family house.

† See ante, pp. 365, 366.
Vyavastha. 201. An unchaste woman forfeits her right to maintenance also.*

The other class of the dependant members† of the family are:—impotent persons, persons born blind or deaf, mad men, idiots, the dumb, those who have not some one organ or have lost the use thereof, those afflicted with elephantiasis, or with incurable or obstinate and agonizing disease, professed enemies to their fathers, hypocrites or impostors, and the like,† as well as those who are disinherited by custom. &c.

Vyavastha. 202. These are entitled to maintenance out of the late proprietor's estate.

Authority. Manu, after promising impotent persons and the rest, says:—"But it is just that the heir who knows his duty should give all of them food and raiment for life, without stint, according to the best of his power: he who gives them nothing sinks assuredly (to a region of punishment.)"

The construction of the above text is this: it is just to give all of them, namely, impotent persons and the rest, food and raiment for life.—Coleb. Dig. Vol. III. p. 320.

* The son is entitled to take the share of his father, and his mother must be maintained out of his allotment. Brothers are not bound to maintain the unchaste widow of their childless brother; nor has any authority been found for imposing it as a civil obligation on the son to maintain his mother, if she be an adultress.—Colebrook's remarks. See Strange's Hindu law, Vol. II. pp. 381, 382.

An chastity is a condition of a woman's inheriting on failure of male issue, so it would seem that for want of it she forfeits her right to maintenance.—Ibid. p. 132.

† The claim of another class of dependants remains to be noticed, namely, that numerous one, excluded,—some by their destiny, others by various disabilities,—from inheritance, but all, by the humane provision of the law are entitled, out of it, to an abundant maintenance;—all, unless the outcast and his issue subsequently born, are to be excepted. According to Manu, the substituted heir is to provide it for life, without stint, to the best of his power, subject to penalties and consequences, that have been already stated. With regard to the outcast and his issue, authorities differ;—upon which it is observable, however, that he is not excepted by Manu, and that he is admitted by Jāṁyavalkya. It is true, the measure is restricted to food and raiment to which, if the outcast be admissible, it would seem difficult to exclude the adulterous widow. Of persons disqualified to inherit, their childless wives, continuing chaste, are moreover to be provided for, as are also the maintenance and nuptials of their unmarried daughters.—Str. H. I., Vol. I. pp. 224, 225.
203. From the construction of the above text it must be inferred, that he who does not willingly give (food and raiment) shall be compelled to give it.—Ibid.

Authority.

1. Jāgnyavalkya:—“An outcast and his son, an impotent person, one lame, a madman, an idiot, one born blind, a person afflicted with an incurable disease, must be maintained without any allotment of shares.”

The outcast and his issue subsequently born are not excepted by Manu and Jāgnyavalkya, but by (some) other sages, and Jīmūta-vihana and the rest. Thus:

II. Boudhāvana:—“Let the inheritor supply with food and apparel those who are incapable of transacting business, as well as the blind, idiots, impotent persons, those afflicted with (incurable) disease, and calamity, and others who are incompetent to the performance of (religious) duties, excepting, however, the outcast and his issue.”

III. Devala:—“Food and raiment should be given to them excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their fathers’ shares of the inheritance.”

IV. Jīmūta-vihana:—“Although they be excluded from participation, they ought to be maintained, excepting, however, the outcast and his son. That is taught by Devala. See Dā. bhā. p. 103.

V. Sri-krishna Tarkālankāra:—“The maintenance is directed for all, except the outcast.”

By the term outcast, his son must also be understood, for he becomes so in consequence of having been begotten by an outcast. 
Dāya-krama-sangraha, p. 67.

Raghu-nandana and Jagan-nātha are of the same opinion.

204. Their daughters must be maintained until provided with husbands.—Jāgnyavalkya.

205. Their childless wives who preserve chastity, must be supplied with food and apparel; but disloyal and traitorous wives shall be banished from the habituation.—Jāgnyavalkya.

* See the Chapter treating of the exclusion from inheritance.
Remarks:—

I. Since it is directed that daughters must be supported so long as they be not disposed of in marriage, it appears that the expense of nuptials shall be defrayed, and that if no share be received by a son; but if the son do take a share, his sister must be supported, and her nuptials defrayed by him alone, as (is done in common cases) by a son whose father is dead. He alone must likewise support his own father (who is disqualified.)—Coleb. Dig. Vol. III. p. 324.

II. The legislator mentions "childless wives," alluding to the married wives of the eunuchs and the rest."—So the Rātnākara. Twice married women, and other adulterous wives, however they become so, shall not be supported.—Ibid.

III. "Traitorous wives?"—This term, according to the Rātnākara, positively denotes treason, such as the attempt to administer poison or the like, not merely a contentious spirit. Consequently the same married wife who ought to be banished from the habitation by her husband, shall in like manner be expelled by his brothers and the rest.—Ibid.

Legal opinions delivered in, and admitted by civil courts of judicature, and approved of by Sir William Macnaghten.

Q. There were two brothers, the elder of whom had a son, who died during his father's life-time, leaving a widow and two daughters. In this case, on the death of the elder brother, is his son's widow, or his brother's sons, his brother being dead, entitled to inherit from him? If the former, as on her demise there were two sons and two daughters of a daughter, and a son of another daughter living, which of these survivors are entitled to the property which devolved on the widow by right of inheritance?

R. The elder brother having died leaving no heir down to the brother, his brother's sons are equally entitled to the succession, but not his son's widow, as the son died before him.

Authorities:—Vishn. See ante, p. 24.

The brother's sons having succeeded to their uncle, will provide his son's widow with proper maintenance.—Zillah Hooghly, May 22nd, 1821.—Macn. H. L. Vol. II. Ch. I. Sect. 8, Case 2. (p. 105.)
Q. B, son of A, having died during the life-time of his father; will his widow take any share in his property, or in that of C and D, his full brothers, who died after their father?

R. If A had three sons, B, C and D, of whom B died without issue, leaving a widow, and if after this A died, leaving heirs, his two remaining sons him surviving, the right of B to the property left by A is barred by reason of his having died during his father's life-time. His widow therefore is not entitled to any share in the property of her deceased husband's father. She is entitled to receive maintenance, therefore, and to take by inheritance, during her life, any property of which her husband had possession during his life.—Maeo. H. L. Vol. II. Chap. 1. Sect. 8, Case 4. (p. 106.)

Q. A person turned his wife out of his house, whereupon she went and lived in the family of her own brother, and claims her maintenance from her husband. In this case, can she, according to law, sue for the means of support?

R. The wife, having been expelled by her husband from his house, and living with her brother's family, is entitled to obtain maintenance from her husband, provided the husband was not justified in expelling her by the circumstances of the case. This is the received opinion.* Rām-priyā versus Bhṛigu-rām. Dacca Court of Appeal, September 9th, 1815.—Maeo. H. L. Vol. II. Ch. II. Case 1. (p. 109.)

Q. If a man expel his wife from his house, or if she wilfully elope from her husband, and live in the family of her mother; in either case, is she competent to sue for her maintenance?

By voluntary desertion of her husband, the wife loses her right to maintenance.

R. If the husband turned the wife out of his house, and she lived with her mother; in such case, she is entitled to maintenance. But if she without her husband's sanction leave him, and live with her mother, she has no right to maintenance.

Zillah Chittagong, January 14th, 1820.—Maeo. H. L. Vol. II. Ch. II. Case. 2. (p. 109.)

* If the wife have been turned away on account of unchastity, or a similar offence, she has no right to be maintained.
Q. There were four brothers, one of whom died leaving a widow, who, having assigned over to them her husband’s property, movable and immovable, by gift, obtained an agreement from the donees that they would provide her with food and raiment. Subsequently she became pregnant, the fruit of an adulterous intercourse; on which she was expelled from the family house, and the donees now refuse to support her. In this case, has the widow a legal claim to her maintenance from the donees?

R. A virtuous widow of a person who leaves no male heir down to the great grandson, succeeds her husband; and if she violate his bed, she becomes degraded: consequently the widow described has no right to her husband’s heritage, and cannot claim her maintenance, even though she obtained an agreement for her subsistence previously to her offence.

Authorities:—


Text of Nārada. See ante, p. 51.

City Dacca, 21st. January, 1823.—Macn. II. L. Vol. II. Chap. II. Case 5, (p. 112, 113.)

Q. An individual, by trade a blacksmith, had three sons, whom he brought up and supported until they attained the age of majority, when they separated themselves from each other, and took possession of their father’s estate: the father is now old and decrepit, and the sons do not provide him with food and raiment. In this case, is the father entitled to the maintenance from his sons or otherwise?

R. The sons are bound to support their aged parents.*

This is consonant to the doctrines laid down in the Vivāda-bhangārṇava and other works.

* The sons have no property, and cannot seek independency while their father exists, as Manu says: “Three persons, a wife, a son, and a slave, are declared by law to have in general no wealth exclusively their own: the wealth which they may earn is regularly acquired for the man to whom they belong.” Under these circumstances, the father is not only entitled to obtain maintenance from his sons, although the property be acquired by the sons, but he may take a share of it, whether the acquisition was made with or without the personal labour or pecuniary aid of the father.
Authorities:—

The following passage is cited in the *Viváda-bhunghárvava*.—"*Manu* declared, that a mother and father in their old age, a virtuous wife, and an infant son, must be maintained, even though doing a hundred times that which ought not be done.

Zillah Nuddea. Macn. H. L. Vol. II. Chap. II. Case 6, (pp. 113,114.)

Q. There were six brothers, four of whom were by the same mother. They lived together with their father as a joint family, and one of the brothers (the second) died before his father’s leaving a widow nine years old. Of the three surviving brothers of the whole blood, the eldest acquired some property movable and immovable, with his separate funds and exclusive labour. The widow of the second brother now claims one-fourth of her late husband’s eldest brother’s acquisitions, and the share of his ancestral property. In this case, is such widow entitled to a share in the property claimed?

R. Under the circumstances stated, the widow has no right to claim any share of her husband’s ancestral property, or of his brother’s acquisitions, but she must be maintained by the heirs and representatives of her father-in-law. This opinion is conformable to the *Dáya-bhágá*.—Calcutta Court of Appeal, December 4th, 1821. Macn. H. L. Vol. II. Cha. II. Case 8, (pp. 116,117).

Q. A person died, leaving two sons by one wife who died before him,) and a widow and her two daughters, and subsequently to his death one of the sons died. There are now surviving a son of his first wife, and a widow and her two daughters; and, supposing the widow to have received no portion of the property from her step-son,—in this case, is she entitled to any share of the estate; and if so, what is the extent of her right?

R. The widow is only entitled to a proper maintenance from her step-son; and if her two daughters have not been disposed of in marriage, they will also have some share of their father’s wealth to defray their nuptial expenses. Should they, after marriage, be in want of maintenance, in consequence of their husbands’ inability to support them, they must be provided with food and raiment by their half bro-
ther. This is conformable to the Dáya-bhága and other authorities. Zillah 24 Pergunnahs, January 24th, 1818.—Mact. H. L. Vol. II. Ch. II. Case 10 (pp. 117, 118.)

Q. A widow instituted a suit against her father-in-law and her husband's younger brother, setting forth, that her said father-in-law had some acquired ancestral landed property, and that he had two sons, the elder being her deceased husband and the younger her deceased husband's full brother; that her husband died before his father and brother, leaving her and her two daughters, one of whom is since dead but is survived by three minor sons, and that she claims only sixty Rupees per annum due on account of her proper maintenance, at the rate of five rupees per mensem. In this case, is the widow, whose husband died before his father and brother, competent to bring an action against her father-in-law and brother-in-law for her maintenance? Supposing the plaintiff's husband to have been separated from his father and brother during his life-time, in this case, is the widow competent to claim her maintenance from the individuals above mentioned?

R. A son dying before his father, his widow, living virtuously and obediently to her husband's family, is entitled to obtain maintenance from her father-in-law or other successor to his property; but if her husband have received his share from his father, and been separated from him, she cannot in that case claim maintenance as against him or his heir. This opinion is consonant to the Vivádáraśsaa-scás and other authorities.

Zillah Beerbhoon, August 14th, 1823. Kamal-maśi Dáśi versus Bodh-nárváyán Majumdár and another.—Mact. H. L. Vol. II. Ch. II. Case 11. (pp. 118, 119.)

Q. Does the right of succession which an insane person would have had to his father, provided he had been of sound mind, devolve on his mother or on his wife? And supposing such insane person to have had a son, born subsequently to the death of his (the insane's) father, which son is since dead; in this case, was the grandson entitled to inherit immediately from his grandfather by reason of his father's insanity; and if so, on his death, has his mother any title to succeed him?
R. The insane person's wife has no title to inherit from her father-in-law. The widow of the original proprietor excludes her daughter-in-law; but the insane person and his wife must be provided by her with the necessaries of life out of the estate. If, however, after the death of the grandfather, a son of the insane person have been born, and subsequently died, the original proprietor's daughter-in-law will, as mother of the child, take the heritage in succession to her child and supply food and raiment to her mother-in-law and husband. This doctrine is contained in the Dáya-bhága and other authorities.

Zillah 24 Pergunnahs, 12th July, 1812. Umá Debí versus Rám-maṇi Debí.—Macn. H. L. Vol. II. Ch. IV. Case 2. p. 130.

Q. A person died, leaving a son and a daughter by different wives. The son is insane and dumb, and there is no hope of his recovery. In this case, is the daughter alone entitled to succeed to her father's property, or does it devolve on his maternal grandfather, subject to the condition of his maintaining the son?

R. Under the circumstances stated, in default of his widow, the daughter of the deceased is alone entitled to the succession, to the exclusion of the son. The son's maternal grandfather has no legal claim to any share of the property subject to the condition stated, but the son must be supplied with the necessaries of life by his half sister.

Authorities.—

Manu:—"Impotent persons and outcasts, persons born blind and deaf, mad men, idiots, the dumb, and those who have lost a sense or a limb, are excluded from a share of the heritage."

Devala:—"On the death of a father or other owner of property, neither an impotent man, nor a person afflicted with elephantiasis, nor a mad man, nor an idiot, nor one born blind, nor one degraded for sin, nor the issue of a degraded man, nor a hypocrite or impostor, shall take any share of his heritage. For such men, except those degraded, let food and cloths be provided."

Cases bearing on the vyavastha No. 199.

I. Claim by Padu-maṇi Choudhurāṇī for a moiety of an ancestral estate, as heir to her deceased husband and his brothers, was dismissed, because it appeared that her husband died before his father and brothers. She was declared entitled to maintenance only. 14th February, 1825. S. D. A. Rep. Vol. IV. p. 19.

II. Shambhu-chander Ghose having died without issue, leaving his step-mother Joy-maṇi and grandmother Karuṇā-moyi, held that not Joy-maṇi but Karuṇā-moyi was the heiress of Shambhu-chander; that the latter inherit Shambhu-chander’s share, but the former has a right to maintenance out of it, and may follow it for the purpose of obtaining her right into the hands of Karuṇā-moyi, and may now, if she has just cause, require security as to her rights.—Con. H. L. p. 68.

III. In the case of Shib-chander Bose against Guru-prasād Bose and others, the Court took, in my opinion, a correct view of the right which a widow, entitled to maintenance, had to security for the due receipt of it. This was a bill for partition. Shashi-mukhí, who was one of the three widows of Madan-mohan Bose and mother of one of his six sons, had died; another widow, Ananda-moyi Dási who was mother of the other five sons, was living. The third widow, Mádhabi Dási, who had been childless, was also living. On the 7th August, 1813, a partition was decreed and the son of Shashi-mukhí was declared entitled (his mother being dead) to one-sixth part of Madan-mohan’s estate. The other five parts were to be divided into six, of which Ananda-moyi was declared entitled to one, and her five sons to one each;—but it was ordered that before any partition be made, the Master do enquire and report what would be a requisite sum for the purpose of securing to Mádhabi (the childless widow) a suitable maintenance, and it was ordered that in the first instance such be set apart for the purpose.

From these decisions, it clearly appears that the widow entitled to maintenance, is not to be left at the mercy of him whose duty it is to maintain her, but that she may compel him to do her justice, and although the obligation imposed upon him be indefinite, that a court
of equity will define it, by adverting to circumstances, and aid her in
the enforcement of such advantages, as the possessor of her husband’s
wealth is bound in conscience to confer.—Con. H. L. pp. 62, 63.

That Mădhabă Dāsī had a right to be maintained out of her hus-
band’s wealth is certain; and when that wealth was to be divided,
among so many, the justice of providing a fund for her support, can-
not be questioned; for no one of the partitioners being bound to sup-
ply her with the necessaries of life, it was just to secure her against
want by a joint contribution.—Con. H. L. pp. 68, 69.

Kamal-mañi Dāsī versus Rama-nāth Basāk.

IV. On partition of the property of a deceased Hindu amongst
his sons, it was held that, after the partition, they were each liable for a
share of the maintenance of their father’s widow.—S. C. 30th March

A Hindu leaves all his property to his sons by will, and a partition
is effected amongst them according to the terms of his will. The court
will grant maintenance to his widow after the partition, and direct
each of the sharers to contribute:—Ibid.

The right of the widow, under such circumstances, does not extend
beyond maintenance, and she has no right to a share of the property
in lieu of maintenance on partition.—Ibid.

A Hindu widow will not be entitled to arrears of maintenance if
she has been guilt of delay in the prosecution of her suit, and her
maintenance will be calculated from the date of the decree.—Ibid.

Litigation having taken place between parties in which the contest
was whether the plaintiff (a Hindu widow) was entitled to a share of
the estate of her deceased husband, but in which it did not appear
that the question as to maintenance was directly raised; it was held
that such proceedings did not act as a bar to her right of mainte-
nance.—Ibid.

In the construction of a Hindu’s will his widow’s right to mainte-
nance will never be barred by implication.—Ibid.

V. Hindu females cannot be deprived of their right to maintenance
by a will, which does not expressly exclude them, though the whole
VI. A Hindu widow has no claim upon her step-grandson, or her step-son’s widow, for maintenance, while she has a step-son living, who alone is bound to maintain her, and even though the others are in joint possession with him of her late husband’s estate.—Krishnąnanda Choudhuri versus Musti Rukkan Debi, 15th February, 1821. S. D. A. Rep. Vol. III. p. 70.

Cases

I. Shibà-sundar Dasi widow of one Golack-chander who died during his father Rám-mohan’s life-time voluntarily left the family house, and sued the defendants who were the surviving sons and representatives of the other sons of Rám-mohan, for separate maintenance: a verbal reference had been made to three respectable Hindus—Khák-náth Malik, Gobinda-chander Bénarjea, and Rám-mohan Neoghi, who awarded 12 Rs. per month as a sufficient allowance to her, she being allowed appartments in the family house, and food.

Peel. C. J.—“We think that she is entitled to a separate maintenance. The words ‘food and raiment’ being too vague and ambiguous an expression, we must refer it to the Master to enquire and report whether the amount offered was just and proper with reference to her situation in life.”—Shibà-sundar Dasi versus Krishña-kishore Neoghi, and others.—25th March, 1851. S. C. (In equity.) Taylor and Bell’s Reports, Vol. II. part IV. pp. 190, 191.

II. Srímatá Mandodari Debi, the eldest of the two widows of Tilak-rám Pákrási a Hindu native of Bengal, filed a bill against his son, praying that defendant “may set forth a full, true, and perfect account of the property of which the said Tilak-rám died possessed, and that he may be compelled by a decree to pay to the oratrix a maintenance proportioned to the same.”

At the first hearing, it was referred to the Master to enquire and ascertain what would be a proper and suitable maintenance (the circumstances of the parties complainant and defendant being duly adverted to and considered) to be made to Mandodari Debi, as one and the eldest of the widows of Tilak-rám Pákrási deceased.
The Master by his report, after reciting that he had been attended by the solicitors on both sides, and by the pandits of this court learned in the Hindu law, found Sa. Rs. 280 per month to be a proper and suitable allowance to the said Srimati Mandodari Deb (the estate of the said parties being adverted to) as well for her own maintenance and support as to enable her to defray the expenses incumbent on her to disburse on account of gifts to her own relations in indigent circumstances, presents to her spiritual teacher, gifts to virtuous Brähmanas, and to officiating priests, charity to the poor, sums necessary for the religious ceremonies requisite according to the Hindus to be performed daily for the benefit of her late husband's soul and her own, as well as for religious bequests, for the reception of guests, for servants' wages, and for pilgrimages to the holy places. The cause came on for further directions, whereupon and upon reading on the part of the complainant the aforesaid report of the Master, and upon hearing the counsel for the complainant, no one appearing for the defendant,—

the court decreed and declared: "that the complainant Srimati Mandodari Deb is entitled to an annuity of Sa. Rs. 280 per month from the day of the death of her husband Tilak-róm Pärásí, and therefore it is ordered and decreed that the defendant Joy-nárayaņ Pärásí do forthwith pay to the complainant the sum of Sa. Rs. 15,120, being the amount of such annuity accrued and grown due from the day of the death of her husband to the sixth day of this present month of March, being four years and six months. And it is further ordered and decreed that the said defendant do also forthwith pay into the hands of the Accountant General of this court a sum of money sufficient to arise an annuity equal to the payment of the sum of Sa. Rs. 280 per month from the day of the date of this decree, and that the Accountant General do lay out such sum of money in the purchase of Co's paper the interest thereof to be paid to the complainant Srimati Mandodari Deb during her life time, and from and immediately after her decease, the said principal sum and the security or securities in which the same shall be then vested, shall revert to and be paid and made over to the said defendant Joy-nárayaņ Pärásí, and that the said defendant be at liberty to make such application to this court on the death of the complainant as he may find necessary. And it is further ordered and decreed that an injunction do issue out of and under the seal of this court to restrain the said defendant from selling
or otherwise disposing of the estates, real and personal, which were of, and belonged to, the said Tilak-rám Pákrási, until the above mentioned sum of Sa. Rs. 15,120 and the aforesaid annuity are both fully provided for.*"

The above decree having proved ineffectual, Mandodári Débi again filed her bill praying that the lands of Tilak-rám Pákrási be sold to satisfy her demand. The bill was taken pro confesso, and upon the hearing exparte, 8th July, 1802, the Master was directed to take an account of so much of the lands and hereditas of Tilak-rám Pákrási as should be sufficient to satisfy the decree of 23rd March 1801, and to sell the same and pay the proceeds to the Accountant General.

In September 1801, the younger widow, Koushalyá Débi filed her bill against her own son Joy-náráyan Pákrási. This bill was taken pro confesso. The suit of Koushalyá Débi was heard on the 14th July 1801, exparte, when it was declared and ordered: That the said complainant Koushalyá Débi is well entitled to a maintenance out of the estate which was of Tilak-rám Pákrási her late husband, and which has come to the hands of the said defendant Joy-náráyan Pákrási. And it is further ordered and decreed that it be referred to the Master of this court to enquire and ascertain what is a proper and suitable maintenance to be made to one of the widows of Tilak-rám Pákrási deceased.

The report was accordingly made, finding Sa. Rs. 40 per month to be a proper allowance for Koushalyá Débi. The following are the minutes of the final decree, made on the 11th July 1803 upon reading the Master’s reports, in both causes: The court, in consideration of the second widow being entitled to a maintenance out of the estate, declared that the sum to be paid to her be charged upon and payable out of the annuity of Rs. 280 directed to be raised for Mandodári Débi by order of this court.

On the 18th July, the minutes were amended (in the first cause) by introducing the following, viz. that, upon securing to Koushalyá

* It is thus evident that a maintenance, if not voluntarily yielded, may be enforced by law, and I conceive it will follow that widows having a right to maintenance, may restrain the representatives of their husbands from wasting or making away with, their estate, or at least compel the possessors under such circumstances, to give security for the due payment of a suitable maintenance.—Con. H. L. p. 62.
Debi the payment of her annuity of Sa. Rs. 40, per month. E. Loyd, Esqr. the Master (out of the gross amount of sales of the estate of the said Tilak-rám Pákrási) do pay over to the complainant (i.e. Mandodari Debi) the sum of Sa. Rs. 6,309-5-1, being the arrears due to her, from the 23rd March 1801 to 21st January, 1808, being 1 year 10 months and 16 days.—Srimati Mandodari Debi versus Joy-nárayan Pákrási (1830-1-3.) Kousalyá Debi versus Joy-nárayan Pákrási (1803.) For further particulars of these two cases, see Montriou's Cases of Hindu law. pp. 408—412.

_Jadu-maní Dási versus Kheytra-mohan Shíl._

_S. C. 21st of July, 1854._

Case bearing on the vyavastha No. 193.

Peel, C. J. delivered the judgment of the Court on this question.—The question in this case is whether a Hindoo childless widow, who, some short time after the death of her husband, uncompelled by cruelty or ill usage, left the house of the family of her deceased husband, to dwell at first in the house of her own father, and subsequently with her aunt, living with her own relations, the residence being in all respects a proper one and her conduct unimpeached, forfeits her right of maintenance out of the property which was that of her deceased husband in his life-time, and which had devolved on his heirs. In several decisions of this Court it has been held that under such circumstances no such forfeiture is incurred. In a recent case in the Sudder Dewanny Adawlut it has been decided, though not unanimously, that under similar circumstances such a forfeiture is incurred. This decision has, however, been followed by another in the same court, in which it was held, that if the widow leaves the residence for that of her parents on a tender of an insufficient maintenance she does not forfeit her right to maintenance. This state of the authorities has induced us to examine closely into the law on the subject. We should not hesitate to follow the decisions of the Sudder in preference to those of our own Court, if they appeared to us to be at once more just and more conformable to the Hindoo law. We have intended to follow the Privy Council. The Privy Council has, on the subject of the right of the Hindoo widow to return to the home of her parents, laid down a broad rule upon which it is not desirable to infringe. That Court says: "it was
not pretended that she had withdrawn herself for unchaste purposes. She was only fourteen at the death of her husband; his brothers were young men: and she thought it more prudent and decorous to retire from their protection and live with her mother and her family after the husband’s death, therefore, it appears quite clear from the answers given by the pāṇḍits that she did not forfeit the right of succession to the husband’s estate, on account of removing from the brothers of her late husband; that they had no right to insist on her not withdrawing herself from them, in order to put herself under her mother’s protection.”* The decisions of that Court must, of course, give the law to all Courts here.

The answer of the pāṇḍits which the Privy Council adopts is, that—‘if a widow from any other cause but unchaste purposes ceased to reside in the husband’s family and took up her abode in her parent’s family, her rights would not be forfeited.’ This was followed in the Sudder Dewanny in the case of a Hindu widow and heiress. It is to be observed, however, that in the subsequent case of August 1850 by the same Court, the case was considered by the dissentient Judge as one of doubtful authority, and the Court was of opinion that she did not forfeit her right by leaving the husband’s house and seeking shelter under the roof of her own parents on an offer of an insufficient maintenance. In the case where the forfeiture was declared, the Judges who gave the decision observed that the deceased husband had never owned the property and that it was a mere case of maintenance. We do not adopt the distinction, but nevertheless, we regard the case before the Sudder as different from the present one.

Strange, in his book on the Hindu Law, treats the right to maintenance as a charge on the property in the hands of the heir, and it certainly has always been so considered in this Court. In the Privy Council the question was whether the Hindu heiress forfeited her estate, by selecting, without impropriety, her father’s roof for her residence. But it is to be observed that the opinion of the pāṇḍits was generally expressed as to forfeiture of rights, and the Court expressed in general terms that the widow had a right under the circumstances to select that residence, and could not be compelled to reside under the

roof of her husband’s family. This freedom of choice had respect to causes as applicable to a widow not an heiress as to one who inherited.

There are certainly texts in the Hindu law both ancient and modern which speak of the right of the relatives of the husband to have the widow resident under their roof in preference to that of her own family. The modern text writers do not adopt as law all the ancient texts. The question must always be, are those positions in their nature capable of being applied by a Court of Justice, and how far are they to be modified with reference to the altered usages of society, and the altered position of things? It is to be observed further that the ancient text writers do not state in any case that maintenance is forfeited if the widow inverts the order of residence and prefers her father’s roof or that of her deceased husband. Macnaghten, in the passage of his work which is referred to in the Sudder, does not state that the consequence of non-observance of the rule as to residence is a forfeiture. We have examined the texts of the ancient law, and we think they bear out the opinions of the pandits in the case before the Privy Council. The texts say as to maintenance, forfeiture is incurred by unchaste life, but they do not say that it is incurred otherwise. There are many duties enjoined to women in the text of a moral or religious nature, the violation of which would never have involved any forfeiture. Forfeitures are not to be extended by construction. The duty to reside with the family of the deceased husband, is not enjoined for the sake of thrift, merely because it may in that way be least burdensome to maintain the widow, (that may be always duly regarded and provided for by the exercise of discretion in the amount and mode of maintenance) but the foundation of the duty to reside is that she may be safe from being tempted to sin, and so may avoid disgracing herself and dishonouring family. The texts speak in condemnation of her resort to ‘strangers’ for a dwelling. But the woman is presumably as safe under her own father’s or family’s roof as elsewhere. It is no resort to the house of strangers, and there is nothing dangerous, immoral, or dishonoring in the act. It is not shown to be in any way abhorrent to the usages and customs of respectable Hindus: on the contrary we believe it to be a common practice, not disapproved of. The reasons which existed in the olden time for placing restraints on females, applied just as much to female heiresses, as to females entitled to mere maintenance. Nothing can
be found in the old texts which imposes the condition of forfeiture on widows and heiresses, not acting strictly on the rules as to preferential residence. The stronger words have been controlled by the Privy Council with a declaration of the widow’s right, founded on reasons of decorum and propriety which are applicable to all cases alike. The majority of the Court in the case in the Sudder declare the Hindu widow, to be always in a dependant estate. This view is, however, dissented from by Mr. Welby Jackson, with much force of argument and expression. Undoubtedly such was the ancient status, and to a limited extent it is true still. But the status of the Hindu female has improved, and is improving.

The Hindu law governs suits between Hindus in the Supreme Court in three cases only, contract, succession, and inheritance. In other cases the English law is as to them also the law of the Court: the only modification is this that the family usages and rights of Hindu fathers and heads of families are to be observed. The Court is bound and always willing to give due effect to those rights. The Hindu law says in several texts, ‘reason and justice are more to be regarded than mere texts, and that wherever a good custom exists it has the force of the law.’ The manners of one age are not necessarily those of another. A corrupt practice dies away: mankind, as they advance in civilisation and knowledge, learn to be more mild and tolerant, and to respect more the natural rights of others. The feeble are less subject to oppression, the slave grows into a freeman, the rights of women are at least in part acknowledged. “I have always understood,” says Sir Henry Seaton, “that the law of a country was to be found not in the mere text of its code, which can never be more than the foundation of it, but in the practice which has prevailed under it, which may be often inconsistent with it, and even in some cases opposed to it. We cannot adopt in preference to our own established by several decisions, another rule if it can be said to be the rule of Sudder authorities as established there, which seems to impose something like a penalty on the exercise of a reasonable freedom, allowed in practice amongst virtuous and intelligent Hindus. We may remark further, that as the Indian Legislature has relieved against forfeitures for even graver offences in the eyes of strict Hindus, it seems inconsistent with the spirit of that law to decree a forfeiture for a
minor infraction of the strict letter of the Hindu law, in a case which brings no disgrace, and is unattended with sin or danger.

We think this lady is entitled to part of that which she asks; six Rupees per mensem, which was the sum offered her, was, we think, considering her station and the property, too little: twenty Rupees which she claims would not have been too much had the property been larger. We shall award ten Rupees per month, and the back maintenance must date only from the date of the demand. We might in a proper case say there shall be no back maintenance, and further maintenance should be enjoined only on the condition of residence with the late husband's family: but in this case, we think there is no ground for attaching any such condition to the award of maintenance.” Decreed accordingly.—Englishman, 26th of July, 1854.

**PETITION No. 283 of 1852.**

*Bámá-sundarí Debi Plaintiff, versus Rám-dhan Bhattá-chórjiya, defendant.*

II. The grounds of application for admission of a special appeal is that the plaintiff, who is the wife of Rám-kumár, deceased, eldest son of a Hindu, defendant, is not entitled to maintenance from her father-in-law; that the decree is for maintenance while the claim is for the period between 1251 to 1257, and that she has forfeited all claim by going to reside with her father. On the first point we are of opinion that it was unnecessary to call for a Bewastha (vyavasthá) as according to the Hindu law and established precedents of the Court, the widow is entitled to maintenance from the heir of the family. The second objection is good. As regards the third objection, we find that the lower courts have declared that the plaintiff was expelled from the defendant's house by him, and the plaintiff's husband was not repudiated by his father, defendant. The plaintiff has not, therefore, under these circumstances, forfeited her right to maintenance. Her seeking shelter in her own father's house was not her voluntary act.—The 10th of August, 1852.
S. D. A. D. p. 796.
CASE NO. 677 OF 1858.


I. Plaintiff sued to obtain a money equivalent for the maintenance (bharan poshan) allowed her under her father's will. The Moonsiff gave a decree for the sum claimed; but on appeal the Judge reversed the decision considering that, under the terms of the fifth paragraph of the will, plaintiff was only entitled to the maintenance so long as she continued to reside in her father's family; that having left it, and residing with her husband's family, and failing to prove that she was compelled by ill treatment to leave her paternal home, she is not entitled to that maintenance, nor its equivalent in money.

We admit the special appeal, to determine whether the construction put upon the terms of the will by the Judge is correct.

Judgment.

We agree in the opinion come to by the judge, that the testator never contemplated an equivalent for the 'bharan poshan' being made to the special petitioner in money, should she leave the family mansion. As long as she was in the family, she was entitled to this maintenance; and it might be a question, from the terms of the will, whether she might still demand it; but had the testator intended that she should receive a money on her leaving the family, he would we think have distinctly expressed such intention. We dismiss the special appeal with costs.—The 14th of April 1859. S. D. A. D. p. 457.

II. Kunja-maṇi Dāsi and Bilās Dāsi, two of the widows of Ràjá Naba-krisñā, filed their bill against Gopī-mohān Deb the adopted son, and Ràjá Ràj-krisñā the begotten son of Ràjá Naba-krisñā, praying an account and separate maintenance. To the answer of Ràjá Ràj-krisñā the will of Ràjá Naba-krisñā was annexed, from which it appeared that he had given to each of his wives, money and jewels suitable to their situation in life—and that he had directed them to be maintained by his son Ràjá Ràj-krisñā in the family house. The defendants stated that the widows (complainants) had left the family house without any cause, and had gone to reside elsewhere. Ràjá Ràj-krisñā offered to maintain the complainants, if they would return to...
principle of these last cited cases applies to that now before me, and that accordingly the plaintiff is not entitled to a decree against her husband’s father for a money allowance, and consequently she must accept maintenance in such shape as the defendant chooses to give it to her, and the defendant has a right to say that he will not maintain her unless she resides in his house. This appears to be contrary to a case decided on the 10th of August 1852, Sudder Dewanny Adawlut Reports p. 796, but the distinction above alluded to appears to have been overlooked by the Sudder Court though apparently not by the lower court. In the case of Cally-dosee Dossy versus Chunder-saker Bistoo, in which Sir Mardant Wells made an order for maintenance, the point was apparently not argued.—23rd of June, 1864. H. C. O. Hyde’s Reports Vol. II. p. 103.

Rājī Ichchhā-moyī Dāsī versus Rājā Apārva-krishnā Bahādur.

Case bearing on the vyavastha No. 196—198.

The Honorable J. P. Norman Judge.—The plaintiff who is the elder wife of the defendant and the mother of his eldest son seeks to obtain a decree for suitable maintenance alleging that the defendant who is a man of large property refuses to permit the plaintiff to live with him or to make her any further or other allowance than Rupees 40 per month which is incommensurate with the defendant’s income and wholly inadequate to maintain the plaintiff in her position as his wife, she having given the defendant no just cause of complaint.

By her written statement the plaintiff alleges, that in consequence of the insufficiency of the allowance made her, she has been compelled to incur debts to the extent of about 8000 Rupees. That the defendant has since October 1862 made no payment to the plaintiff but claimed to retain the allowance he used formerly to make her to meet a debt of the plaintiff to his mother. That the defendant has threaten to turn her out of door and that she has been forced to pledge her jewels to provide herself with the means of support.

The defendant by his written statement after setting out reasons for contending that Rs. 40 per month is a sufficient maintenance, alleges that he receives out of the fund, in court in a suit of Krishna-chunder Ghose versus Krishna-sakha Ghose, the sum of Rs. 350 per month for maintenance which is his only permanent and reliable income.
and which together with his small uncertain income from other sources is not sufficient taking in to account his own personal expenses and the expenses of maintaining the other members of the family to enable him to make a larger allowance to the plaintiff than the sum of Rs. 40 per month. He states that he does not refuse to permit the plaintiff to live with him or threaten to remove her from the apartments in which she now resides.

The defendant was called as a witness by the plaintiff to prove what his income was. He admitted that the aggregate of his income for the last eleven years had amounted to Rs. 1, 40,780 or in other words had averaged Rs. 12,798 a year. By another mode of computation according to his own statement his present income would appear to be about Rs. 14000. But looking as the fact that amongst the assets set down is the profit of a talook at Rs. 900 per annum which is admitted to have cost him Rs. 58000, and looking also to the most uncandid allegations in his written statement as to Rs. 350 per month being his only permanent and reliable income and as to his small and uncertain income from other sources, I cannot give implicit credit to the evidence which he gave in the witness box on that subject, more especially as he appears to have told the plaintiff that his income was Rupees 50,000 a year.

It was proved that after having married a second wife Rāṇī Obhoyā-maṇi, the defendant has for many years ceased to live with the plaintiff. He allowed her 20 Rupees a month for her maintenance until 1857, and from that time Rs. 40 per month for herself and an additional sum of Rs. 10 per month for the expenses of her son whose school expenses however were paid in addition.

It has also been proved that the plaintiff has been treated with harshness, and reflections made upon her character which the defendant has failed to justify.

The question is, has the court under these circumstances jurisdiction to award any and what sort of maintenance to the plaintiff? I approach this question with caution, because I feel that any unnecessary interference on the part of the courts with the power and authority of the head of a Hindoo family, as a husband and father, is greatly to be deprecated.
I find the following passages of Hindu Law applicable to the present case. In Colebrooke's Digest, Book IV, Chap. I, Section 2, Shloka LIX NARADA, "a husband who abandons an affectionate wife or her who speaks not harshly, who is sensible, constant and fruitful, shall be brought to his duty by the king by a severe chastisement." Again LXXII JÁÑYAVALKYA: "He who forsakes a wife though obedient to his command, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay a third part of his wealth; or if poor, to provide a maintenance for that wife." Macnaghten (Hindu law Vol. I p. 59,) says: "In all cases and for whatever cause a wife may have been deserted she is entitled to sufficient maintenance." In the Maitréasará a distinction is made where a second wife is married there being a legal objection to the first, she is entitled to a sum equal to the expenses incurred in the second marriage; but when no objection whatever exists to the first wife, a third of the husband's property should be given as a compensation. But in modern practice a husband considers it quite sufficient to maintain a superseded wife by providing her with food and raiment." In Strange's Hindu law in a cause from the Chittoor Provincial Court it is said "The best rule in case of the abandonment of a virtuous wife appears to be that she is entitled to suitable maintenance, the ultimate measure of which is one third of the estate of her husband. Applying these principles, to the present case it appears that in deserting the plaintiff the defendant was guilty of a legal wrong; that he is bound to supply the plaintiff with a reasonable maintenance sufficient for her wants and befitting her status, and not merely such maintenance as he being the head of his family may think fit to allow her. It has been proved that the allowance made has not been regularly paid. On one occasion in particular it was upwards of eight months in arrear, and the whole of these arrears when paid in some mysterious way went to redeem company's papers belonging to the defendant. It is evident that an order of the Court is necessary to secure proper maintenance to the plaintiff. With respect to the amount which the plaintiff is entitled to receive much evidence was given as to the allowance which is made to widows of various members of the family of the defendant, which is 40 rupees per month. But according to Hindu law widows are bound to live a life of abstinence and privation, and it by no means follows that the allowance which suffices for a widow is suf-fi-
cient for the plaintiff, who is the wife of a Hindu gentleman of high position and considerable affluence. Neither is the allowance of Rupees 100 per month made by Râjâ Kamal-krishna to his wife to be taken as a measure of the defendant's liability. A wife held in honour by her husband the head of his household and the mistress of his servants such as the wife of Râjâ Kamal-krishna appears to be in a very different position from that which the plaintiff is ever likely again to occupy. The plaintiff appears to me to have rather overstated her claim. I take into consideration the fact that the defendant's family is considerably larger than that of Râjâ Kamal-krishna, but I think that the plaintiff is fairly entitled to an allowance at the rate of 80 Rupees per month to be increased to 120 Rupees if she be turned out of the family house, and there will be a decree for that amount from May 1865 inclusive. The plaintiff will get costs on scale No. 2.—H. C. O.—22nd of April 1865.
CHAPTER IV.
ON MINORITY AND GUARDIANSHIP.

Section I. ON MINORITY.

Vyavastha. 206. Agreeably to the law as current in Bengal, the end of the fifteenth year is the limit of minority.*

Authority. I. An infant (shishu,) before his eighth year, must be considered as similar to a child in the womb; until his sixteenth year (a) he is called bāla (minor) and also poganda (adolescent;) afterwards (he is considered as) acquainted with civil affairs (or adult in law.) Nārada and Kātyāyana.—Vyavahāra-tattva. Vide Celeb. Dig. Vol. II. p. 125.

(a) “Until his sixteenth year,” signifies to the nearest limit of his sixteenth year: consequently he is a minor until the close of his fifteenth year.—Ibid, Vol. I. p. 300.

II. Infancy extends to the fifth year; childhood is limited to the tenth; adolescence continues to the sixteenth year, when puberty commences.—A text cited by Śrī-dhara Śivāmī.—Ibid, p. 300.

Authors agree that minority extends to the end of the fifteenth year; and that until that time the minor is called ‘bāla;’ but they differ in giving him the other names at particular of periods of his age during minority. Thus in the text of Nārada and Kātyāyana he is denominated ‘shishu’ to the eighth year; and he is called ‘bāla,’ as well as ‘poganda’ till the sixteenth year of his age. In the text cited by Śrī-dhara Śivāmī he is called ‘kumāra’ till the fifth year, poganda till the tenth, and Kishora to the end of the fifteenth year: after that his puberty commences. Jagan-nātha alluding to the text of Kātyāyana above cited, says as follows: “Under eight years, or before the commencement of his eighth year, he is an infant (shishu:) and he is also a minor, (but) distinguished (from an adolescent.) Another is also distinguished, called a young infant (kumāra) to the com-

* Vide Sri Krishna's Commentary on the Dātyāhāga (Coleb,) p. 58;—and Macn. H. L. Vol. I. p. 103:

It may be here mentioned that, agreeably to the Regulations of Government, the state of minority is held to extend to the end of the eighteenth year. See Section 2, Regulation XXVI of 1793.
ment of his fifth year; agreeably to the same text cited by Rāghu-nandana, infancy extends to the fifth year. The use of this distinction regards penance or expiation and the like. But here minority must be taken to the end of the fifteenth year; and this must be understood of a computation by vulgar or sāvana time from the day of his birth. Afterwards he is adult or competent to (manage) affairs.*

Vyavastha: 207. A minor is incompetent to do any civil act: such, if done by him, is void and revocable.†

Authority. I. A contract made by a person intoxicated, or insane, or grievously disordered, or wholly dependant, by an infant, or a decrepit old man, or (in the name of another) by a person without authority, is utterly null.—MANU. See Coleb. Dig. Vol. II. p. 193.

II. A contract made by a person intoxicated, or insane, or grievously disordered, or disabled, by an infant, or a man agitated by fear or the like, or (in the name of another) by a person without authority, is utterly null.—JĀGYAYVALKYA. Ibid. p. 193.

III. What is given by a person in wrath or excessive joy, or through inadvertence, or during disease, minority, or madness, or under the impulse of terror, or by one intoxicated or extremely old, or by an outcast, or an idiot, or by a man afflicted with grief or with pain, or what is given in sport; all this is declared ungiven, or void.—VIHASPATI. Ibid, p. 197.

IV. What has been given by men agitated with fear, anger, lust, grief, or (the pain of) an incurable disease, or as a bribe, or in jest, or by mistake, or through any fraudulent practice must be considered as ungiven; so must any thing given by a minor, an idiot, a (slave, or

* Mr. Colebrooke says:—"The distinction may be thus recapitulated: a minor (bala) is in early infancy to the end of his fourth year, and called kumāra; in law he is an infant to the end of his seventh year, and in this period of his life is called shisha; he is called a boy (patanda) from his fifth to the end of his ninth year; and his adolescence (kisēra) continues from the tenth to the end of the fifteenth year.—Dig. Vol. I. p. 300.

† According to Nārada and many other authorities a minor can neither be arrested, nor summoned to answer a suit: and a trial in which a minor is plaintiff, or defendant, is pronounced to be wrong.—Colebrooke’s remarks. Vide Strange's H. L. Vol. II. p. 210.
other) person not his own master, a diseased man, one insane, or intoxicated, or in consideration of work unperformed.—Nárada. Ibid. p. 181.

V. What has been given by men under the impulse of lust, or auger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back.—Kátyáyana. Ibid, p. 187.

It is owing to this civil incompetency that—

Vyavastha 208. One is not bound to pay, during his minority, the debt of his ancestor even though he inherit his assets,* but he must pay it on attaining majority.

Authority. I. On the death of a father, (his debt) shall in no case be paid by his sons incapable from nonage of conducting their own affairs; but at their full age (of fifteen years,) they shall pay it in proportion to their shares; otherwise they shall dwell hereafter in a region of horror.—Kátyáyana.†

II. Even though he be independent (a,) a son incapable from nonage of conducting affairs is not (immediately) liable for debts.†—Nárada.

(a) 'Independent;'—separate. It is consequently intimated, that there is no other person, such as undivided brothers and the rest, amenable for the payment of that debt. He, who has neither father, nor mother, is also deemed independent.†

Owing to the same incompetency it has also been ordained, that—

Vyavastha 209. The property received by a minor should be deposited, free from disbursement, in the hands of his kinsmen and friends.

Authority. Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority; as well as of those who are absent.† Kátyáyana.

* It has, however, been determined as a settled rule, that debts must follow the assets in to whosoever hands they come. See ante, pp. 342 & 345.

So a text expresses, "The property of minors should be so preserved until they attain their full age."

Vyavastha. 210. A guardian should be appointed for taking care of his property and managing the necessary affairs.

Legal opinion delivered in, and admitted by, a court of justice, and examined and approved of by Sir William Macnaghten.

Q. A man dies involved in debt, and is survived by two minor sons the elder of whom is only thirteen years of age, and there is no adult representative of the deceased. If any person bring an action against the minors, that action, according to the privileges conferred by the Regulations of Government, and to the established usage of the country, cannot be admitted, and it has been provided, that minority continues until the completion of eighteen years of age, after which period majority commences. In this case, according to the Hindu law, is an action brought against the elder son of the deceased debtor admissible or not? And does the liquidation of the debt contracted by the father become incumbent on him?

R. According to the law, the action for debt brought against the elder son of the deceased debtor, who is only thirteen years old, is not admissible. When the minor may attain the age of majority, he must discharge the debt contracted by the father, and not previously.†

Zillah Midnapore.—Macn. H. L. Vol. II., Ch. X, Case 11 (pp. 287, 288.)

SECTION II.
ON GUARDIANSHIP.

Vyavastha. 211. The sovereign (a) is the universal superintendent of those who cannot take care of themselves.‡

* Coleb. Dig. b 58 p. 58.
† At the expiration of the term of minority, the son and son's son of a person deceased are bound to discharge the obligations of their ancestor; and other heirs are so, provided they take his assets; but under no circumstances is a minor answerable for such obligation: and so long as the minority continues, the property left by the deceased cannot be sold for the liquidation of any debt he may have contracted. The Sudder Court, however, has decided against this opinion, as will presently seen.
Vyavastha. 212. In this capacity, he (a) is to care of, and to look after, the property of a minor until he attain majority.*

(a) The sovereign viz.—the court representing the sovereign.*

Authority. I. The king should guard the property of an infant, and the effects of the husband and wife (in the absence of the husband.)—VISHNU.

II. Let the king protect the effects of infants who are incapable from nonage of conducting their own affairs, and the goods belonging to widows of learned priests and of valiant soldiers; but effects of which there are no owners escheat to the king.—SANKHA and LIKHITA.

III. The king should guard the property which descends to an infant by inheritance, until he return from the house of his preceptor, or until he have passed his minority.—MANU.

The meaning is, let him act in such a manner that other heirs may not take the whole, defrauding the infant, who is incapable from nonage of conducting his own affairs; or the sense may be, let him commit the share of the minor in trust to any one co-heir or other guardian. Until he return from 'the house of his preceptor;' this alludes to the (first) three classes, for persons of those tribes are not qualified to conduct their own affairs before they return home. “Or until he have past his minority;” this alludes to the servile class; a young man has past minority when his age is not less than sixteen years, (that is, when he has completed his fifteenth year.)—Coleb. Dig. Vol. III. p. 542. Thus,—

Vyavastha. 213. It rests with the sovereign to take care of the infant and his property, or to appoint a guardian for the purpose.*

Vyavastha. 214. The guardian should be a fit person from amongst the infant’s relations, the paternal male kindred being always preferred to the maternal relations and females.*

The order is as follows:—

Vyavastha: 215. The father is recognised as the natural, as well as legal, guardian of his minor children.*

The mother being the natural guardian of her infants, is not included among the females, but is ranked next to the father. Consequently,—

Vyavastha: 216. The mother (a) assumes the guardianship on failure of the father.*

(a) The term 'mother' comprehends also the step-mother.†

Vyavastha: 217. In default of the mother, the elder brother of a minor is competent to assume his guardianship: in default of such brother, the agnates or relations in the direct male line are entitled to hold the office of the guardian, and failing such relatives, the guardianship devolves on other relations according to fitness and the degree of proximity.‡

But the appointment of a guardian universally rests with the Ruling power.‡

† And this has been held to include the step-mother, whose right of guardianship was declared to be superior to that of the minor's paternal uncle.—Macn. H. L. Vol. I. page 104.

Sir William Macnaghten says: "But where the duties of manager and guardian are united, she is, in the exercise of the former capacity, necessarily subject to the control of her husband's relations: and with respect to the minor's person likewise, there are some acts to which she is incompetent, such as the performance of the several initiatory rites, the management of which rests with the paternal kindred." (Vol. I, p. 101.)

Although this is according to the spirit of our law, yet the necessity of a mother's being subject to the control of her husband's relations in the management of her minor son's affairs not being recognized by the present courts of justice, it has in practice become quite optional with her to be or not to be under the control of the husband's relations in the exercise of her capacity as manager.


The ruling power is in every instance, whether the natural or legal guardians be living or dead, recognised to be the legitimate and supreme guardian of the property of all minors whether male or female.—Macn. H. L. Vol. I. p. 105.

Thus the property of a woman and the goods of a minor, falling into the king's power, should not be taken by him as owner: this has been already noticed. But it may be here
218. The guardianship of a female until she be disposed of in marriage rests with her father: if he be dead, with her nearest paternal relations. After her marriage, her husband and the rest are her guardians. *

In point of fact, females, according to our law, are kept in a continual state of tutelage.—"Their fathers protect them in childhood, their husbands protect them in youth, their sons protect them in age: a woman is never fit for independence"—(Manu). "When the husband is deceased, his kin are the guardians of his childless widow. In disposal and preservation of property, as well as in her maintenance, they are her Ishwara (lord.) But if the husband's family become extinct, or contain no male, or be helpless, the kin of the widow's father are her guardians, if there be no relations of her husband within the degree of a sapinda."—Narada.

Minors being under the protection of the law; favoured in all things which are for their benefit; and not prejudiced by any thing to their disadvantage, †

219. The guardians of minors cannot do any thing injurious to the interest of their wards, but may do what is advantageous to them.

220. The guardian can dispose of his ward's estate, to meet a necessity arising for the subsistence of him and of those members of the family who must be supported out of the estate; and also for any act the performance whereof is unavoidably necessary.

Sir William Macnaghten cites a case which is as follows:—"A, a Hindu Zemindar of Bengal, executed a deed of sale for a portion of his estate to B; B executing a separate engagement that the sale should

---

remarked, that the property of a minor should be entrusted to co-heirs and the rest appointed with his concurrence; or, if the infant be absolutely incapable of discretion, with the consent of a near and unimpeachable friend such as his mother and the rest.—Coleb. Dig. Vol. III. pp. 543, 544.

† Vide Coleb rooke on Obligations and Contracts, Ch. X, para, 585.
m; which term, however, expired without repayment on her
question then here was, First, Could any rule of Hindu law
land from becoming the property of B, on the term of the
without repayment? Secondly, If there be no such rule,
how saved the land for a time by the second conditional sale,
a case of necessity, such as to justify her act in behalf of
as clearly beneficial to him? Thirdly, If a father sell a
his land, with a condition, for redemption, and his heir
or the guardian on the part of the heir do not redeem, is
and gone irrevocably? And Fourthly, Do not the debts of
come payable out of his assets even in the hands of his
is minor,) on demand from the guardian? The substance of
the Hindu law officers consulted on this occasion was,
seisity for the sale has been made out, inasmuch as the
the deceased could not have been legally alienable for his
debts until after the minor had attained majority. Judge-
however, given in favor of the purchaser; and the following
were used on the occasion: That supposing the ancestor's
sale to have remained unredeemed after the expiration of
stipulated, and the usual term of notice, the land would, of
have fallen to the former creditor: That it was mere folly to
the act of the mother, in saving it for a time and obtaining
period, was not to be held good as an act evidently for the
the minor, inasmuch as, but for her renewal by a fresh loan
pacity of guardian, the conditional sale must undoubtedly
me absolute to the creditor. That according to the in-
actice of the courts, no plea of minority could be listened to,
her doctrine recognised than that the estate of a Hindu of
ome liable at his death for the satisfaction of his just debts,
where he has pledged his land as security for those debts,
is power of selling outright, or conditionally, any part of or
all his landed property, could not be questioned: That the doctrine maintained by the court appeared to be supported by the opinion of the commentator Jagan-nātha, and that, though there should prove to be conflicting opinions as to the law, the established usage and practice ought to prevail: And, in short, that whatever might be the real doctrine of the Hindu law on the subject, the court was bound to follow that law in matters of inheritance, marriage, caste, and religious usages only, and not in matters of contract, of which nature the case in question appeared to be.”—Macn. H. L. vol. I. pp. 106—108.

The learned compiler has very ably impeached the above decision. Some of his arguments are as follows:—“It may be observed that, supposing the minor’s estate not to be liable, there did not exist any necessity for the widow’s making a conditional sale. It may be assumed too, that, according to our own regulations, a mortgage would not be foreclosed against a minor, that he would be allowed his equity of redemption on coming of age. It did not, therefore, signify whether the term of mortgage was near expiring or not. It was at the lender’s own risk to take a mortgage, in which the borrower’s interest might expire before expiration of the term.” The learned compiler then makes a brief inquiry as to the law of the case, and says that the law appears to be quite clear, when disencumbered of the commentary of Jagan-nātha, whose authority cannot be held to be oracular and incontrovertible in any instance, especially where it is opposed by texts of unquestionable weight and indubitable import. And after finishing the inquiry, he concludes thus: “It follows, that where, owing to a son’s minority, the father’s assets are taken in charge by another person, such person cannot legally apply any portion of the assets to the payment of the father’s debts; and that it is only where a person succeeds to property in his own right, that he is at liberty to pay the debts of the ancestor by means of such property. A guardian may, indeed, dispose of a portion to meet a necessity arising for the minor’s subsistence; but no necessity can by possibility arise for disposing of any portion to pay the minor’s father’s debts, for he must cease to be a minor before he can be liable. Nor does there appear to be much of hardship in this rule. The provisions of the English law savour of much more hardship; for, according to it, real estates are not subject at all to the payment of debts by simple con-
tract, unless made by will. It may be, perhaps, but just, that the period for exacting payment should be postponed, until he comes to years of discretion sufficient to enable him to realise the means of satisfying the creditors with the least detriment to himself."—Ibid. Vol. I. pp. 108.—111.

But his inquiry as to the law of the case appears, however, to be useless when the court would not follow that law in matters of contract. As to his opinion "that were, owing to a son's minority, the father's assets are taken in charge by another person, such person cannot legally apply any portion of the assets to the payment of the father's debts," and that "a guardian may, indeed, dispose of a portion to meet a necessity arising for the minor's subsistence; but no necessity can by possibility arise for disposing of any portion to pay the minor's father's debts, for he must cease to be a minor before he can be liable," it does appear to be equitable in every case; for, when a guardian is appointed not only to provide for his ward's subsistence, but also to take care of and save his property and to do every thing for his benefit, then, if the sale of a portion of the estate could liquidate the father's debts and save the remainder, which, on waiting till the minor's full age, would, very probably be lost in satisfaction of the accumulating interest, the sale of such portion was certainly warranted by the necessity of saving the remaining estate and the minor from deprivation and ruin, and consequently it is the duty of a guardian to do so, as such an act would be evidently for the benefit of the minor. The learned compiler further observes that, 'because a guardian does not hold in his own right, he is not at liberty to pay the debts of his ward's ancestor by means of the property he holds, and that the minor must cease to be a minor before he can be liable.' But the court held neither the minor nor his guardian liable, but the property left by the debtor, declaring—"that, according to the invariable practice of the courts, no plea of minority could be listened to, or any other doctrine recognised than that the estate of a Hindu in Bengal becomes liable at his death for the satisfaction of his debts." By this if the court meant that no plea of minority could be listened to even where a minor is left helpless without a guardian, and that the estate left by a deceased debtor must be held liable to satisfy his debts even in a suit by the creditor against such estate, without any defence on behalf of the minor as to the justness or otherwise of the demand, then, indeed, there is hardship and want of equity in the rule: a rule
not at all supported by the Regulations which the court was bound to follow; and which in such cases enjoins that the plea of minority must be listened to. But where a minor has a regularly appointed guardian for taking care of his estate and managing his law affairs, there the minor should not of course be taken in the light of a helpless one; inasmuch as a minor can institute or defend suits through his guardian or procese amby* and there and then the decision or rule in question can apply without complaint of severity or illegality.

Vyavastha. 521. A kinsman or next friend may institute and defend suits for a minor.

Authority. Kinsmen may institute or defend suits for women, minors, idiots, and sick men: servants, appointed, may do the same.† Vyása,—cited in the Vyavahóra-tattwa. p. 7.

Vyavastha. 222. A guardian must render an account regarding the property he was in charge of, is responsible for his acts, removable for abuse of his trust.‡

Legal opinions delivered in, and admitted by, the several courts of judicature, and examined and approved of by Sir William Macnaghten.

Q. A widow borrowed some money to defray the necessary expenses of her minor son, and executed a bond in the name of her son (with her own signature) to the creditor for the debt. In this case, according to law, is the bond valid and binding on the son?

R. Any bond which a mother, having contracted a debt for the maintenance of her minor son, may have executed in the name of such minor son in favour of the creditor, is valid and binding, according to the texts of Vrihaspati and other sages, cited in the Viváda-ratnákara, Viváda-chintá-maṇi, Dëya-tattwa, and other authorities.

* See Colebrooke's opinion, apud Strange's Hindu Law, Vol. II. p. 209.
† Upon this the commentators have observed that whether delegated or not a well-wisher of persons so incapacitated may plead on their parts. See Strange's H. L. Vol. II. p. 209.
"A debt contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parencers or joint tenants shall discharge."

"A housekeeper shall discharge a debt contracted by his uncle, brother, son, wife, servant, pupil, or dependants, for the support of the family (during his absence.")"


Q. A person died, leaving a widow and son. The widow, during the life-time of her son, brings an action against an individual for some of her husband’s immovable estate. In this case, should the action by her, according to law, be held to be admissible, or not?

R. Where the son of the deceased proprietor is living, the suit instituted by his widow claiming his property cannot be admitted unless the son be a minor, that is, unless he be under sixteen years old, in which case the action by her on his behalf should be held to be admissible, she acting the part of his guardian.

Moorshedabad Court of Appeal, February 15th., 1814.—Macn. H. L. Vol. II. Chap. VII. Case 5, (p. 205.)

Q. A landed proprietor died, leaving two minor sons. The mother and paternal uncle of the minors are living. In this case, does the guardianship of the minors’ persons and estate rest with their mother or with their paternal uncle?

R. The guardianship of the infants in respect of their persons and property, rests with their mother; but if the mother sell or otherwise alienate their property, excepting always in a case of necessity, as if food and raiment be absolutely requisite, she should be divested of the management of the estate, and it should be confided to their uncle, supposing him to be competent and honest.

Zillah 24 Pergunnahs, May 20th., 1810.—Macn. H. L. Vol. II. Chap. VII. Case 4, (p. 205.)
Q. A person died possessed of some real and personal property partly ancestral and partly acquired, leaving a widow under age. In this case, is his father-in-law (the father of his widow,) or his grandfather's brother (whether he lived with the deceased in union or separated from him,) entitled to manage the estate?

R. The management of the estate of the infant widow first rests with her husband's relation, that is, his grandfather's brother, but not with her own father, while such relation exists: in default of the husband's relations, her father becomes her guardian: as is laid down in the text of Náráda quoted in the Dáya-bhóga (Fide ante, p. 51.)

Zillah Hoogly, July 8th., 1815.—M. H. L. V. II. Chap. VII. Case 1. (p. 208.)

Q. In the case of a childless widow who is a minor, and whose father and husband's sister's son are both living, which of the individuals in question is entitled to the management of her property?

R. Of the individuals above specified, that is, the widow's father and her husband's sister's son, the latter is her proper guardian in respect of her maintenance, and in the disposal of the property and care of herself, as, on her death, he is the successor to the property. This opinion is conformable to the Dáya-bhóga, Dáya-krama-sangraha, Dáya-ñattwo and other authorities.

Zillah Junglemehauls; July 2nd., 1822.—Macn. H. L. Vol. II. Cap. VII. Case 3, (p. 204.)

Case bearing on the vyāvasthā No. 218.

I. In the case of Káshi-náth Basák and Ramá-náth Basák versus Hara-sundari Dásti and Kamal-mañá Dásti, it was ruled by the Supreme Court that Bishwa-náth Basák, being at the time of his death, an infant under sixteen years, could not by the Hindu law make a will, bequeathing his estate and property to the defendants after his death.—Clarke's Notes of Decided Cases, p. 92;—Cons. H. L. p. 83.

II. In the case of Katpa-náth Singh versus Kamlá-pat Jáhó and others it was determined that an infant cannot execute a lease, nor enter into any other engagement.—21st. of May., 1829. S. D. A. R. Vol. II. p. 333.
In the case of Kāśikā-nāth Barāk and Ramā-nāth Barāk versus Hara-sundarī Dāsi and Kamal-maṇi Dāsi, the mother of the infant widow Hara-sundarī was appointed her guardian, and a competent monthly allowance was ordered to be paid out of her husband’s estate for her support during her infancy.—Cons. H. L. p. 88.

In the case of Mussamāt Mahtābā against Gaṇesh-lāl and others, decided by the (late) Sudder Court on the 3rd of July 1854, it was held that an elder half-brother of a minor was his natural guardian after the mother (who was disqualified by loss of caste) in preference to the maternal grandmother. S. D. A. D. p. 329.

Bishnu-nāth Dutt versus Durgā-prasād Dey and Shīb-chandra Dey.

This was an action of ejectment for some premises, containing altogether five Kātās and fifteen Chhatāks, with a dwelling-house at Arkuli in Calcutta, of which Nil-maṇi Dey, who died between nineteen and twenty years ago, was the patrimonial owner. It appears by the evidence of one of the family that Nilmaṇi, for the last two or three years of his life, had been insane and incapable of work, and that his wife was obliged to dispose of all his personal property in support of him and his family during his malady. At his death he left his widow Abhoyā and three infant children, two sons, and an unmarried daughter. Those sons are the present defendants. At his death there was nothing left for the subsistence of his family but the property in question, and another small piece of ground, containing five Kātās and a half, which he had purchased a short time before his derangement.

The present lessor of the plaintiff claims under a deed of purchase, in reality from the widow, but nominally from her and her eldest son, both being parties to the deed, dated 15th Agrahāyaṇ 1203 B. S., nearly twenty years ago, for the price of Rs. 218. It is not disputed that the price was fair at the time; and it appears to have been an open and avowed transaction; but it was also admitted that, at that time, Durgā prasād, the eldest of the two infant sons, and who was a nominal party to the deed, was only seven or eight years of age.

The right, therefore, if any, of the widow to dispose of this property arose, and was put upon the ground of necessity, for the support
and subsistence of herself and her children. This formed the first and principal point which was made, and on which the opinion of the \textit{pandits} was taken as follows:—

Question to \textit{pandits}, i. Can a Hindu widow, having infant sons sell the property of those sons to a stranger under any circumstances of want? \textit{Answer.} She may, to preserve the children from want, and that without consulting the rest of the family. Q. 2. By what authority? A. 2. The \textit{Dáya-tattwa}, the \textit{Dáya-bhága}, and the \textit{Vivóda-chintámani}. Q. 3. If there be a widow and brother of the father's side, and infant children, who is to manage for the family, whether divided or undivided? A. 3. If the family were undivided, the uncle of the children has the management. If divided, the widow has it, but in cases of emergency she will consult the relations of her husband. Q. 4. Suppose she sold the property without consulting those relations, would the sale be binding? A. 4. It is necessary for her to consult the relations; but if they refuse, then she may sell without their consent, as much as is necessary for the purpose. But she can, in cases of emergency, sell without. Those cases of emergency are, the subsistence of a child, the portion of a daughter, and a \textit{shréddha}. Q. 5. If the widow have the means of subsistence from the support of the family, can she then sell the property? A. 5. Not so, if she have support.

In addition to these opinions of our own \textit{pandits}, we desired this case to stand over, in order to learn what the opinions of other \textit{pandits} might be, as I had been informed that the same question was then actually pending before the Mofussil court of appeal, and that Mr. Watson, the Judge, had desired the opinion of the Mofussil \textit{pandits} to be taken upon the points: and I have been since informed, that, in the course of our last vacation, those opinions having been taken, were in conformity to the opinion of our own \textit{pandits}; and that Judgment was given accordingly by the court of appeal in favour of the widow's right to sell in cases of necessity.

In truth, it seems that such a power is founded in necessity and good sense, in a country where there is no public provision for the poor; for otherwise it might happen that a child's life might be sacrificed for preserving his property.
The only question, therefore, which remains, is, whether the necessity, from which the power arises, did in fact exist in this case.

As to this, a relation of the deceased father proved, on the part of the plaintiff, that the father was insane for two or three years before his death; that his wife was obliged to dispose of all his personal property during such his insanity, for the support of himself and family; that there was nothing left at his death but the real property; that if the ground had been let it would only have brought in six rupees per Kākā a year, but that it was occupied by the family themselves; that they had nothing else to subsist on, or to clothe themselves with; that before the sale she did consult Jagān-nātha, the head of the family, who was a subscribing witness to the deed of sale; and that eight months after the ground had been sold the widow married off the daughter.

The only way that this evidence was met on the part of the defendants was, by providing that, after the husband’s death, the widow, who had an elder daughter married in the father’s life-time, used to go to her house, and had victuals occasionally given her, and this frequently, but she never staid the night; that the elder of the infant sons, who had staid at the married sister’s for two years previous to the father’s death, after he became insane, continued to reside there afterwards; and that the younger son, about a month after the father’s death, also went to reside at his sister’s; but both the sons were occasionally at their mother’s. That the mother herself used some times to receive a rupee, sometimes half a rupee, from another of the relations; and that they were all in great distress. This evidence rather tended to confirm than to impeach the case of necessity made by the plaintiff.

In all cases the law must have a reasonable construction to forward the object of it. It cannot, therefore, be necessary, to authorise sale of the infant’s property, that the family should be in absolute and urgent want of the necessaries of life at the very moment; or sufficient to take away the power, that they are subsisting at the time upon the charitable donations of their freinds and relations, who may at any moment withdraw their help from them. Land is not to be sold at a moment’s warning; but if the family have no certain re-
source for the future and no actual means of providing for themselves the decent necessaries of life according to their condition, and no regular competent allowance from the family, but only mere casual charity, which was the state and condition of this family, this constitutes a reasonable necessity to warrant the sale of the property.*

On these grounds we think that the purchase was well made, and that there should be judgment for the lessor of the plaintiff, who had been in possession under the purchase-deed for nearly nineteen years before he was lately ousted by a judgment in ejectment snapped against him. Judgment for the plaintiff. 4th July, 1815.—East’s Notes, No. 34.

_Dharma-dós Pandey and others versus Shyámá-sundari Debí._

Case Pending a suit for partition by a widow, she adopted a son by the direction of her late husband; by the Hindu law the act of adoption diverted the property from the widow and vested it in the adopted son subject to the maintenance of the widow. Notwithstanding the adoption, however, the suit was prosecuted in the widow’s name, and a decree was made directing her to be put in possession. It was held by the Judicial Committee of the Privy Council, that, in such circumstances, she prosecuted the suit as guardian of the adopted son, and that she was entitled to possession as his trustee, and accountable to him for the property so decreed to her. 8th December 1813. Moore’s Indian Appeals, Vol. III, p. 229.

* The widow in this case was in the position of a guardian to her infant sons. A widow, whether as guardian of her son, or heir to her husband, is justified under a necessity in disposing of the property descended to her son or herself.
CHAPTER V.—PARTITION.

SECTION I.—PARTITION BY A FATHER.

TIME OF SUCH PARTITION.

While the father's right subsists:—


\textbf{Authority}. When the father separates his sons (from himself,) his will regulates the division of his own acquired property.\footnote{Coleb. Dd. khk. p. 23;—Coleb. Dig., vol. III. p. 49.}—\textit{Vishnu}.

\textbf{Vyavastha}. 224. But in the case of property inherited from ancestors, the father's will, associated with cessation of the mother's catamenia, determines the time of partition.\footnote{Coleb. Dd. bhk. p. 23;—Coleb. Dig., vol. III. p. 49.}

\textbf{Authority}. I. After the father's death (natural or civil) let sons share his estate: or while he lives, if the mother be past child-bearing (a), and he desire partition.\footnote{Coleb. Dd. bhk. p. 23;—Coleb. Dig., vol. III. p. 49.}—\textit{Gotama}.

II. On the death of both parents, partition among brothers is allowed: and even while they both are living, it is proper, if the mother be past child-bearing.\footnote{Coleb. Dd. bhk. p. 23;—Coleb. Dig., vol. III. p. 49.}

(a) The phrase 'if the mother be past child-bearing' must be considered as denoting the impossibility of her bearing more sons.—Coleb. Dig. Vol. III. p. 52.

\textbf{Vyavastha}. 225. The term 'mother' comprehends also the step-mother; for she also can bring forth a son (to the father.) \textit{Dd}. T. p. 12. Vide Sri-krishna's comment on the \textit{Ddya-bhad}, p. 32.

\textbf{Vyavastha}. 226. In fact the father's choice, preceded either by the circumstance of the mother and step-mother being passed child-bearing or by that of the father being
incapable of connubial intercourse, determines the time of partition.

In case the ancestral estate be inadvertently divided before cessation of the mother’s catamenia, Visnu says:


If shares have been distributed, although the mother were not too aged to bear more sons, what should follow?—has a son been born after partition, or not? In the first case, the remaining wealth, omitting what has been consumed, must be brought together, and a second distribution must be made: for sons, though born after partition, claim shares of the patrimony which had descended from the grandfather. But in the second case, that very partition is valid. Let it not be objected, that, since the mother’s arrival at a certain period of life can alone entitle the parceners to divide (the estate,) that partition, being made by persons not authorised (to do so) is void, like one which is made by a stranger. Since the phrase ‘when the mother is too aged to bear sons,’ may be explained as providing for the participation of a future son, there is no proof by which it can be established to propound a distinct authority for partition. However, property ill distributed must be again divided. ‘If the mother is too aged to bear more sons’ relates to the patrimony which had descended from the grandfather; for, unless the mother be too aged to bear more sons, partition could not be made among existing sons, since it is reasonable to reserve for those who may be hereafter born, their right to the patrimony inherited from the grandfather: and this is a mere instance of comprehending the case of a father capable of connubial intercourse, but refraining from it: else the son of another wife could have no share. This is evident from the text of Nārada:—

‘When the mother is too aged to bear more sons, and sisters have been given away (in marriage,) and the father refrain from the connubial intercourse, (then shall the partition be made.)—Coleb. Dig. Vol. III. pp. 48, 49.

The phrase “When the sisters are given away (in marriage”) is added to show the necessity of bestowing them in marriage after the
death of the father: it does not denote, says Jīmāṭa-vāhana, that partition cannot take place unless the sisters have been given away (in marriage.)—Ibid. p. 52.

The author of Vivāda-bhangārṇava, after declaring, "While the father's right subsists, his choice alone determines the time for (making partition of) his own acquired wealth; but, in the case of property inherited from ancestors, it is also requisite that the mother be past child-bearing;" says: "and (with this reserve,) the father, or, according to another opinion, he or his son, may choose (the time.") Such opinion is not however respected in Bengal:—I. Because it is repugnant to the dictum of Boudhāyana: "Partition of heritage (is to take effect) by consent of the father." II. Because the son's choice is of no avail at all, the inchoate right arising from birth not being admitted in the Bengal School. III.—Because the division of the estate can never take place if the father, being desirous to marry another wife, does not make the partition notwithstanding the son, after cessation of his mother's catamenia, desired to have the partition made. IV.—Because it is opposed to the opinion respected and quoted by the said author himself, viz.—"In the partition of property inherited from the grandfather, whose will is consulted? the answer is, partition is granted by the sole will of the father: for he is owner of that wealth."* (See Coleb. Dig. Vol. III. p. 42; Dā. bhā. p. 24.)

Consequently, the opinion of Jīmāṭa-vāhana is correct, which is:—"A division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, that it is requisite the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition." (Dā. bhā. p. 34.) It is consequently true that a distribution takes place at the will of the father only, and not by the choice of his sons. A division of it does not take place without the father's choice: since Manu, Nārada, Gotama, Boudhāyana, Sankha, Likhita, and others, (in the following passages, "they

* The same author has likewise expressed an opinion, that sons, oppressed by a stepmother, or the like, may apply to the king, and obtain a partition from their father of the patrimony inherited from the grand-father, though not a partition of the wealth acquired by the father himself, This also, for reasons above shown, is not the law as current in Bengal.
have not power over it," "they have not ownership while their father is alive and free from defect," "while he lives, if he desire partition," "partition of heritage by consent of the father," "partition of the estate being authorised while the father is living," &c.) declare without restriction, that sons have not a right to any part of the estate while the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.—See Dá. bhá. p. 25.

"If the father recover paternal wealth (seized by strangers, and) not recovered (by other sharers, nor by his own father,) he shall not, unless willing, share it with his sons: for in fact it was acquired by him." In this passage, Manu and Vishnu, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will (i.), in the case of hereditary wealth not acquired (that is, recovered,) by him. But here also the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he retrieved: but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.—Ibid. pp. 28, 29.

(i) 'Against the father's will'—that is, not according to his free will, but according to will created through fear of sin.—Śrī-krishna's comment on the Dáya-bhága. Sans. p. 41.

*Legal opinions delivered in, and admitted by, Courts of Justice, and selected and approved of by Sir William Macnaghten.*

Q. 1. A person had three sons, the youngest of whom abseended from his family house, and the father went towards Brindá-ban to make inquiry after him. His other two sons remained at home. In this case, is the eldest son competent to exercise proprietary right over the landed and other property? Supposing the eldest, in this interval, to have adjusted the proportion of his father's share of the joint property by means of arbitration, in this case, is the adjustment complete and binding?
R. 1. In the absence of the father, who proceeded to Brindá-ban to inquire after his missing son, the eldest son is competent to manage his assessed lands and his other property, in virtue of which he may exercise proprietary right over it. But any partition of joint property made by means of arbitration without the father’s permission, cannot be considered as lawful.

Q. 2. If the father, at the time of his proceeding to Brindá-ban, verbally left directions with his eldest son to adjust the dispute regarding his share of the immovable property held in joint tenancy with his other co-heirs, and he (the eldest son) accordingly did so while he was absent, and the father upon his return be not satisfied with the adjustment, in this case, is such adjustment good and binding?

R. 2. Supposing the eldest son, in the absence of his father, but with his permission expressed at the time of his proceeding to Brindá-ban, to have chosen an arbitrator, and to have received his legal share of the joint property, separated by means of arbitration, such partition of the estate is good and binding, even though the father after his return wish to recede from it.

Q. 3. A person had an only son, who, in the absence of his father, having chosen an arbitrator, caused a partition of his father’s ancestral immovable property which was held in joint tenancy with his other co-heirs; and the father having returned home dissented from the measure, and shortly after died. The son who caused the partition is still living, and wishes to recede from it. In this case, is he competent to do so, or otherwise?

R. 3. The partition of the father’s joint immovable and other property made by the award of an arbitrator, during the father’s absence, without his express permission, and to which the father after his return did not consent, is illegal; and on the death of the father, if the son who caused it to be made wish to recede, it cannot be considered as good and binding.

Zillah Midnapore, May 25th., 1818.—Macn. H. L. Vol. II. Ch. V. Case 4, pp. 148—150.
228. Partition of the father’s own acquired estate is regulated by his will alone.*

229. In the case of his own acquired property, whatever he may choose to reserve, whether half or two shares, or three, all that is permitted to him by the law: but not so, in the case of property ancestral.*

A father, during his life distributing his property, may retire to the forest, or enter into the order suitable to an aged man (u;) or he may remain at home, having distributed small allotments, and keeping a greater portion: should he become indigent (e,) he may take back from them.*—HÁRÝTA.

(u) ‘The order suitable to an aged man:’—that is, the state of a travelling devotee, &c.—See Dá. bhá. p. 44.

(e) ‘Should he become indigent:’—that is, should he have spent the whole of his wealth.—Dá. kra. sang. p. 94.

Even in the self-acquired property, the unequal distribution at the father’s will should be made on the ground of piety or having a large family to maintain, or incapacity, and the like. (Dá. T. p. 8.) Consequently:—

230. If the father make an unequal distribution of his own acquired wealth, being desirous of giving more to one as a token of esteem on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety; the father, so doing, acts lawfully.*

Authority. Jānyavalkya declares:—"A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced (valid)."*

Authority. So Vṛihapati:—"Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised."*

Authority. Nārada likewise:—"For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is lord (o) of all."*

(o) "Lord"—That is, possessed of the power to alienate at pleasure.—Dā. kra. sang. p. 94.

Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution made by the father is lawful only in the instance of his own acquired wealth.* However,—

Vyavastha. 231. Should the father make unequal distribution among his sons, without any of the aforesaid reasons, such division is not moral.—Śrī-kṛishna's commentary on the Dāya-bhāga, Sans. p. 65.

Authority. Thus Kātyāyana:—"But let not a father distinguish one son at a partition made in his life-time, nor on any account exclude one from participation without a cause(k).†

That is to say: let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. (This does not relate to the specific deductions:) for the distinguishing of sons by allotting to them the prescribed deductions extends to many, and is not confined to one. One son should not be distinguished without cause. But for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one has no reference to specific deduction; but

intends a distribution made according to the father's mere pleasure (g,) as before explained.†

(k) 'without a cause'—Such as piety, a large family to maintain, or inability (to earn his livelihood,) and the like, (as explained on the concurrent opinions of Jimūta-vāhaka and the rest.)—He shall not prefer one son, or distinguish him by assigning to him a larger portion, nor shall he exclude one of his sons from a share, or disinherit him without a legal cause of exclusion, such as degradation and the like, or spontaneous relinquishment of his share.—Coleb. Dig. vol. II. p. 540. Śrī-krishṇa concurs in this exposition. See his Commentary on the Dāya-bhāga, Sans, p. 70.

(g) By the term 'mere pleasure' is meant that he can divide his self-acquired property at his pleasure, for any of the above reasons. Śrī-krishṇa's Commentary on the Dāya-bhāga, Sans. p. 70. Consequently,—

Vyavastha. 232. Unequal partition is lawful, when grounded on the reasons (j) above mentioned.—Dā. bhā. p. 52.

(j) 'Grounded on the above reasons'—that is, on the ground of piety, having a large family to maintain, and so forth.—Śrī-krishṇa's Commentary on the Dāya-bhāga. Sans. p. 69. But,—

Vyavastha. 233. If the father give a greater portion to one son, and give less or none to another son, through perturbation of mind occasioned by acute disease, wrath, &c., or through the influence of excessive partiality on his mind from love or the like, such distribution is invalid.*

Reason. Because he having no power to do so, it is made by one who is disqualified.

Authority. I. A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object (t) or who acts otherwise than the law permits, has no power in the distribution of the estate.*—Nārada.

(t) "Engrossed by a beloved object:"—that is, excessively partial towards the son of the favourite wife.—Vide Dā. Kra. Sang. p. 95.

Authority. II. A contract made by a person intoxicated, or insane, or afflicted with severe illness, or by a vyasanī (d.) by an infant, or by a man agitated by fear or the like, or by a person without authority, is void.—Jāgnyavalkya.

(d) "Vyasanī:"—Addicted to gaming or the like: for the word vyasanī is explained, "danger, or calamity, degradation or depravity, and the vice proceeding from lust or wrath."

Under the term "and the like" are comprehended, as Raghu-nandana observes, a man wholly dependent, a slave, a son, and the rest: and that observation is just.*

Since the eighteen titles of administrative law are comprehended under the term, "contract" (vyavahāra,) partition of heritage (by a person so circumstanced) is also null.*

Should the father give his whole fortune, or nearly the whole, to one son, through partiality, and give nothing to another, or a trifle only, through resentment, such a distribution may be resisted. The text of Vṛhāspati and others cannot deny the right of opposition: for it is declared in the text above cited that "the father has no power (in such circumstances) to make a partition different from the law (of inheritance)."

Consequently, the sense is this; as the worship of deities, performed during impurity, is productive of no merit, so does the volition of one insane, wrathful, or the like, who intends to make a gift, produce no divesture of former property; for, as a pure worshipper is alone qualified for the one act, so is a wrathless man or the like for the other. Consequently, since the distribution made by him is null, partition must be made afresh.—Coleb. Dig Vol II. p. 543.

The decision therefore is this:—

Vyavastha. 234- If the father give a greater portion to the sons who are dutiful and so forth, the partition

is moral as well as valid; if he give less to one and more to another, or disinherit any son, through perturbation of mind occasioned by disease, &c. such an act is not valid; and if he, without any merit—such as dutifulness or the like,—or without perturbation of mind, but only at his own pleasure, make an unequal distribution, it is also valid though not moral.

Vyavastha. 235. When sons unanimously request partition (in the father's life-time,) the father shall not make unequal distributions on account of (filial) piety or the like.*

Authority. Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case.*—Manu.

But he may give a deduction of a twentieth part and so forth to the eldest son and the rest; for it is not of the nature of an unequal distribution; and the allotment of greater and less shares only is forbidden.*

Authority. The father, being advanced in years, may himself separate his sons; either dismissing the eldest with the best share (n) or in any manner as his inclination may prompt.*—Narada.

(n) "The best share"—that is, the deduction of a twentieth part or the like ordained by Manu.—Vide Coleb. Dig. Vol. II. p. 538.

The unequal distribution, here intended appears evidently to be different from that, which consists in giving the best share to the first-born; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt;" thereby distinctly authorising any unequal distribution, which the father, for reasons before mentioned, may think proper to make.*

---


If a man has five sons;—one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwise circumstanced. These four, but not the fifth, demand a partition. In this case unequal distribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. Coleb. Dig. Vol. II. p. 546.
VYAVASTHA-DARPANA.

Should the father not give a deduction of a twentieth part and so forth to a virtuous eldest son and the rest, the partition is not therefore invalid; for the allotment of a twentieth part and the like is founded (only) on piety and other merits, and equal partition is also propounded by the law: and if he do allot a suitable portion, including a deduction of a twentieth part and so forth, to his eldest son and the rest, the partition is not different from the law of inheritance; for the law assents to a deduction of the twentieth part and the like.—Caleb. Dig. Vol. II. p. 543.

Legal opinions delivered in, and admitted by, Civil Courts of judiciary, and examined and approved of by Sir W. Macnaghten.

Q. A Brahmin, who was possessed of some consecrated images, rent-free lands, ancestral and self-acquired lands, and three sons. Previously to his death, he verbally gave the lands and consecrated images to his eldest son, and the rent-free lands to his other two sons. In this case, is there any necessity for the execution of a document to perfect the verbal gift? In other words, should the father have died without executing a written gift, is each of his sons entitled to an equal share of his property?

R. In this case, it requires no written instrument to perfect the gift, as far as regards the self-acquired property; and the sons are incompetent to disturb the distribution made by the father, even though there be no document forthcoming. They are entitled, however, to share equally the ancestral lands.

Authorities:—

Nárada's Text. See ante, p. 419. Jágyavalkya:—"When the father makes a partition, let him separate his sons (from himself) at his pleasure, and either dismiss the eldest with the best share, or (if he choose) all may be equal sharers."—Mitákshará.

Zillah Junglemehals, may 24th, 1811.—Macn. H. L. Vol. II. Ch. V. Case 2, pp. 146, 147.

Q. A father distributed his property among his sons, and subsequently to that distribution he wished to take it back from them. In this case, is the distribution revocable by the father?
R. If the father have divided his self-acquisitions among his sons, and subsequently become indigent, he is competent to take back such property, as is expressly declared by a text of Hāmtra cited in the Vivāda-chintā-mani: "A father during his life distributing his property may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments, and keeping a greater portion: should he become indigent, he may take it back from them."


A SHARE MUST BE GIVEN TO THE SONLESS WIFE.

Vyavastha. 235. If the father make an equal partition among his sons, his sonless wives must have equal shares with the sons.

Authority. Even the childless wives of the father (m) are pronounced equal sharers.— Vyāsa. See Coleb. Dā. bhā. p. 64. (m) The term ‘of the father’ in the genitive form is put for the nominative. In the partition made by the father, his sonless wives only are entitled to shares, not those who have sons, while in the partition made by the sons, their mothers only are to have shares, and not those who are not mothers of sons.—Śrī-kṛṣṇā’s comment on the Dāya-bhāga, Sans. p. 82.

Vyavastha. 237. This donation of equal share (to a wife) occurs, where no strī-dhan or peculiar property has been bestowed on (her) by her husband and the rest.

Authority. "If he make the allotments equal, his wives, to whom no strī-dhan has been given by their husband or their father-in-law, must be rendered partakers of like portions."* Jāngyavalkya.

Vyavastha. 238. If strī-dhan has been given to some of the wives, the son-less wives must be rendered, by the father, partakers of property to the same amount.*

---

* When the father makes a partition of his own acquired property, he should give a share equal to the share of a son to such of his wives, as are destitute of sons.—Def. Brā, Sūng. p. 98.
Vyavastha. 239. But where such stri-dhan has not been given, they must be rendered equal sharers with the sons.*

This is the law in the case where the sons are made equal shares.*

Vyavastha. 240. Where the father has allotted lesser shares to his sons and reserved a greater portion for himself, equal shares must be made up (to his son-less wives) from his own portion.*

Vyavastha. 241. In the case of stri-dhan having been given, half a share (y) is to be given (to the son-less wife.)*

Authority. By the rule of analogy, observed in the case of a wife whose husband marries a second wife, and who has received stri-dhan, being entitled to receive only half of the ádhi-vedanika* (r.)

So the text of Jágnyavalkya: "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the suppression, provided no stri-dhan have been bestowed on her: but if any have been assigned, let him allot half."†

(y) 'Half a share'—that is, half of a son’s share is to be given to the wife.—Dá. T. Sans. p. 10.

(r) The property which is bestowed on a first wife, by a man desirous of marrying a second, is termed ‘ádhi-vedanika,’ the object of such gift being to contract a second marriage. This should be equal to what is given to the second wife.*

Although this (property) relate to the gift made to a superseded wife, and the text ‘to whom no stri-dhan has been given’ relate to the partition made by the father, yet it may be so assumed in the pre-

† 'Let him allot half!'—The allotment of a moiety implies that the other moiety is completed by the woman’s separate property. Else so much only should be given as will make her allotment equal to the son’s.—Makeshevara.
sent case also; conformably to the maxim, "that the sense of the law as ascertained in one instance, is applicable in others also, provided there be no impediment."—Sri-krishna's commentary on the Dāya-bhōga, Sans. pp. 81, 82. See Coleb. Dā. bhā. p. 63. Note, 31.

According to Jimala-vāhana, Raghu-nandana, Sri-krishna Tarkālan-kāra, and the rest, when partition is made by a father, a share equal to that of a son must be given to the wife who has no son, not to her who has male issue; her son should be considered as alone entitled to share in the partition: this, they think, agrees with common sense. But, when partition is made by sons, no share need be allotted to the step-mother who has no male issue; but food and raiment must be assigned, for the late owner of the property was bound to support her.*

"But if the female property have been given, an equal share completed by including that property must be allotted."—This doctrine of Jagan-nātha is found neither in the Dāya-bhōga, nor in the works of the other leading authorities, all of whom have laid down the following opinion subsequently expressed by Jagan-nātha himself. "Should the father, by his own choice, give equal shares to all his sons, his wives must have equal shares with his sons, if they have received no female property either from their lord or from his father; but if such property have been given, a moiety of a share will be ordained; according to the text: "But if any (strī-dhan) have been given, let him allot half."**

This also is the opinion of the same author: "From her lord, or from his father," this is a mere instance, comprehending his grandfather, mother, and the rest. The meaning is this: when she has received, from any person, wealth which would ultimately have accrued to her husband, that shall be included in completing her allotment; but if she received it from her own father or other relative, or from the maternal uncle or other (collateral) kinsman of her lord, such wealth shall not be included in her allotment, because it was exclusive of his claims. Such is the method of interpretation consistent with common sense.***

If he allot an excellent share to the eldest son and so forth, his wives shall not have such excellent shares and the like; but, after


setting apart the deducted allotments, they shall receive equal shares together with deduction, as ordained by A\'pASTAMBA;*—"The pots of the house and the ornaments shall be allotted to the wife."

**Vyavastha.** 242. If the share allotted to a wife or mother (or grandmother) be consumed in her support, she is entitled to receive alimony from her husband or son, for, at all events, she must be maintained.*

**Vyavastha.** 243. But if a surplus remain above the consumption, and the husband's wealth be wholly dissipated, he may, by parity of reasoning, resume property from his wife, as he might resume it from his son.*

**Vyavastha.** 244. Like a widow, the wife also cannot, without a just cause, or legal necessity, give, sell or mortgage the property received in partition.

Can the property received by a wife, mother, or grandmother, when partition is made, be disposed of by her like her stri-dhan, or must it be held as received in right of affinity, and incapable of being alienated by her (without a legal cause)? To this, Jagan-n\'\'tha has made conflicting replies assenting to both. In one place he says: "The share allotted to a wife and the rest, like that which is given to a son, may be disposed of at their pleasure. Hence, like female property, the gift, sale, or other alienation of that share is valid: for it is equally given her by her husband and the rest."† In another place he affirms: "Nor should it be objected that, since the share of a wife is in a manner (gratuitously) given, it ought to be held similar to female property. Being received in right of the relation of a wife to her husband, it is justly considered as similar to connected property, or wealth devolving on heirs in right of affinity."‡ A few of the modern lawyers, concurring in the former opinion, have said that property obtained by a woman in partition is to be held as her stri-dhan, given by the husband and the rest, it being more in the nature of a gift, than what she succeeds to in her own right. But most of them have concurred in

---

the latter exposition of Jegan-nātha, it being grounded on the opinion of Sri-krishna Tarkālankīra,* and more consistent with reason.

"Such being the case, would her daughter succeed to such wealth on her death, if she leave no male issue, although a son born of another wife (of her husband) be living?" No; for the text 'after her, let the heirs take it,' may relate solely to property received by the wife in right of her connection (by marriage) as easily as it may relate to the property of the husband, in which the wife has an interest; since there is no argument, on which one meaning should be selected in preference to the other, and the right of the husband's heirs has been alone propounded. Again, the equal title of her own son, and of one born of another wife is admitted.†" The following therefore should be the rule of decision:

Vyavastha: 245. She will only enjoy the property (like a heritage,) restraining herself until her death; after her, the heirs of the former owner will take it.

When a distribution is made by a father, if his own mother be living, no share is ordained for her; since the law has only ordained the allotment of a share to the mother, when partition is made by sons with each other. It should not be argued, that her participation may be deduced from the law which ordains the allotment of a share to a grandmother, in the case of partition among grandsons. This is not partition made by her grandsons, but by her son; it is, therefore, a distribution made by her own son.‡

Sir William Macnaghten writes: "But the doctrine laid down by Hari-nātha is, that if the father reserve two or more shares, no share need be assigned to the wives, because their maintenance may be supplied out of the portion reserved. It is also laid down in the Vivādārṇava-shekaj that an equal share to a wife is ordained, in a case where the father gives equal shares to his sons; but that where he gives unequal portions, and reserves a larger share for himself, he is bound to allot to each of his wives, from the property reserved by himself, as

---

* Sri-krishna Tarkālankīra does not admit the validity of sale or other alienation by a wife and the rest. Coleb.—Dig. Vol. III, p. 23.
† Coleb, Dig. Vol. III p. 23.
‡ Coleb. Dig. Vol III, p. 31.
much as may amount to the average share of a son. These shares to wives are allotted only in case of no property having been given to them. According to some authorities, if she had received property elsewhere, a moiety of son's share should be allotted to them; but according to other authorities, the difference should be made up to them between what they have received and a son's share.” (Vol. I, pp. 47, 48.)

SELF-ACQUIRED AND ANCESTRAL PROPERTY DEFINED.

Vyavastha. 246. Property originally acquired by the father is properly his own acquired property.

Vyavastha. 247. Ancestral property seized by strangers but recovered by the father with his own exertion and so forth, can be used as acquired by himself.*

Authority. I. If a father recover the property of his father (seized by strangers, and) which remained unrecovered, he shall not against his will, share it with his sons, for in fact it was acquired by himself.*—Manu.

Authority. II. “Over the grandfather’s property which was seized (by strangers) and is recovered by the father through his own ability, and over (any thing) gained by him through science, valour or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but, on failure of him, the sons are pronounced entitled to equal shares.”*—Jānyavalkya.

The above rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself.

Shankha propounds a special rule regarding land:—

Vyavastha. 248. Land, inherited in regular succession, but which had been formerly lost, and which one shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part.*

* See Colab, Ṭṛi. bha. pp. 134, 135.
By the term 'solely' the author intimates, that neither common funds were used nor joint personal exertions made. Still it does not become the separate property of the person retrieving it: but a fourth part of the land recovered must be given to him in addition (to his regular allotment:;) by force of the word 'land;' and because there is no reason for supposing it to be vague.*

Vyavastha'. 249. Where there is ancestral real property, the father has full dominion over the personal property though inherited from the grandfather, and has power to distribute the same unequally just as his own acquisition.†

Authority. "The father is master of gems, pearls, and corals, and of all (other movable) property; but neither the father nor the grandfather is so of the whole real estate."—Jágyatvállkya. (Dá. bhá. p. 29.) But where the (grandfather’s) estate consists not of land, corody, and slaves, but only of gems and other movable property, there the father has not power to consume or dispose of all; since the reason is the same, and the text which declares the father to be master applies where the estate consists of both movable and immovable property.—Srir-krisn̄a’s Commentary on the Dáya-bhága, Sans. p. 42.

Vyavastha'. 250. Land, corody, and chattles, inherited from the grandfather by the father in right of affinity, are held to be properly ancestral, the father having no power to use them as his self-acquired property.*

Authority. "The ownership of father and son is the same in land, which was acquired by the father’s father, or in corody (l.) or in cattles."† (l.) Jágyatvállkya.

(1) A "corody" signifies what is fixed by a promise in this form: "I will give that in every month of Kárтика."†

By 'cattles,' from their association with land, slaves must be here meant.†

That the property descended from the paternal great-grandfather is to be treated as that inherited from the paternal grandfather, ap-

pears to be indisputable. But the question is, whether property inherited from the maternal grandfather and the rest is or is not to be treated just as that devolved from the paternal grandfather? To this question some reply, "that his own acquired wealth," in the text of Viṣṇu,* signifies that which was gained by his own act; but, what is received from the maternal grandfather, being gained without any exertion on the part of the father, is not acquired by his act; he shall therefore receive two shares or the like, as suggested by the general rule. It should not be objected, that the text only ascribing to the father and son equal dominion over property left by a paternal grandfather, they have not such claims in this case. Their equal dominion is a necessary consequence of considering the term, 'property left by the paternal grandfather,' as a mere instance of a general sense; else it would not be a rule, that the father, being the son of one born blind shall take two shares or other (greater) portion of property inherited from the paternal great-grandfather. The term 'property left by the paternal grandfather,' must be explained as 'property inherited in right of affinity:' whether it be received from the paternal great-grandfather, and so forth, the father and son have equal dominion over it. Nor should it be argued, that property regularly descending from ancestors, is alone intended by the term 'estate left by the paternal grandfather;' and that any other property, whether left by a maternal grandfather, or received in a present, or the like, is regulated by the law which allows the reserve of the greatest part and so forth. There is no argument to prove that an estate devolving from the maternal grandfather and the rest is not considered as regularly descending from ancestors: and legislators have not distinguished property devolving eventually on collaterals or on descendants in the female line." Against this Jagan-nātha affirms: "That reply is not satisfactory; for, when the heritage of one who leaves no kinsman devolves on a fellow student, or on a learned priest, the father and son would have equal dominion. In the case where the son of a daughter's son does not succeed to property eventually devolving on a distant heir, by failure of the direct descent in the male line, surely that son has no dominion if his father be dead; but, if his father be living, he is not even noticed. The very same exposition is

proper in respect of the heritage devolving, from the father of the paternal great-grandfather, on the grandson of his grandson; for that has not regularly descended* from ancestors. But the heritage of the paternal great-grandfather, successively devolving on his son and the rest until it reach the great-grandson, has regularly descended, in that case the rule of equal dominion vested in father and son must be argued: however, when a great-grandson, whose father and grandfather are both dead, succeeds to the estate of his paternal great-grandfather, he and his son have equal dominion. There is no objection to explain 'property left by the paternal grandfather' an estate inherited in right of birth whereby the ancestor attains a region of bliss; for texts show, that a man reaches heaven by the birth of a son, of a son's son, and of the son of that grandson.'†—Coleb. Dig. Vol. III. pp. 61—63.

This opinion of Jagan-nātha is reasonable and just. Consequently,

Vyāvasthā. 251. The property regularly descended is to be treated like that devolved from the paternal grandfather.

Vyāvasthā. 252. The property devolved from the maternal grandfather and the rest can be used as self-acquisitions.

"If a father make a partition between himself and his sons, he may give or reserve, at his pleasure, any part of his acquired wealth:" after this text of Viṣṇu, the author of Vivāda-bhāgārpaṇa, having cited the following opinions of Chandeshwara (1.) and Misra (2.)—"This concerns wealth acquired by the father without using the patrimony which had descended from his own father" (1.) "what has been acquired without adventuring patrimony, a father has power to distribute in equal or unequal shares" (2.)—says: "that is reasonable; for, what is gained on the adventure of property left by his father, being considered as an acquisition of his father, by means of that property adventured, is deemed a part of his patrimony." (Dig. 2. p. 539.) This, however, is not the doctrine of the Bengal School, according to

* Regular descent extends only to the great-grandson; on failure of him the estate devolves on the wife, &c. but after some deviations the line of successions reverts to the lineal kindred.

† See Ante, p. 33.
which, the inchoate right arising from birth not having been admitted, the son has no right to his grandfather’s property while the father lives: so, any thing acquired by the use of the grandfather’s property devolved on the father, and which is then held to be the father’s, is of course his own acquired property, and not a part of his patrimony.

PARTITION MADE BY A FATHER OF THE PROPERTY ANCESTRAL.

When a father separates his sons, (from himself,) his will regulates the division of his own acquired wealth; but, in the estate inherited from the grandfather, the ownership (a) of the father and son is equal. Viṣṇu.

(a) Ownership or dominion over the father’s estate during his life is not propounded by declaring the equal dominion of father and son over property inherited from the grandfather; for that inference has been already disproved. But the father alone has absolute property; and equal dominion is affirmed to show that no unequal distribution can be made in this case.*

The ownership being figuratively attributed to the son, though he be not the true owner, a right attendant on ownership is alone assumed: and that right consists, according to Jīmūtavāhana in the power of claiming partition, and in that of resisting unequal division; for there is no ground for selecting one of these rights to the exclusion of the other. It does not consist in taking an equal share with the father; for that is not acknowledged by Jīmūtavāhana.*

Vyavastha. 253. When the father makes a partition of the ancestral property, he may take two shares for himself, and allot to each of his sons a single share.†

Reason & Authority.

For the text of Vṛihaspāti, which declares: “The father may himself take two shares at a partition made in his life-time,” relates to ancestral property. †

Authority.

Nārada also by saying: “Let the father, making a partition, reserve two shares for himself;” does so ordain without restriction.—Dā. bhā. p. 35.

* Coleb, Dig. Vol. III. pp. 35 & 43.
† Dā. kra. rāng. pp. 95, 96.

55
VYAVASTHA-DARPANA.

As for the text of Vaiśaspati: "In wealth acquired by the grandfather, whether it consists of moveables or immovables, the equal participation of father and son is ordained:" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply that the shares must be alike.—(Ḍá. bhá. p. 42.) Consequently,

Vyavastha. 254. A father may reserve for himself two shares of wealth which has regularly descended in succession (from ancestors:) he is not entitled to more, however desirous of it he may be.—Ḍá. bhá. p. 49.

Vyavastha. 255. A father has not power to make an unequal distribution of ancestral property, consisting either of land, or a corrodoy, or slaves, even though (any of) the causes before mentioned, namely, superior qualifications &c. exist.—Ḍá. kra. sang, pp. 95,96.

For the text of Jāgnyavalkya, which declares—"The ownership of the father and son is the same in land which was acquired by the father's father, or in corrodoy, or in chattles," is intended to restrain the exercise of the father's will.*

Consequently, immovable property inherited from the grandfather, and given or (unequally) divided through the indulgence of the father or through his favour, in consideration of filial piety, of a large family to maintain, or of inability to earn a livelihood, shall not be consumed nor enjoyed (as so distributed;) for this coincides with the text which declares the equal dominion of father and son.—Coleb. Dig. Vol. III. p. 41.

Vyavastha. 256. The father has ownership in gems, pearls and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions, and has power to distribute them unequally,* provided the estate does not consist only of these.*

* See Ḍá. bhá. pp. 29&53.
257. But where the (grandfather's) estate consists not of land, cornroy and slaves, but only of gems and other movable property, there the father has not power to consume or dispose of all; since the reason is the same, and the text which declares the father to be master applies where the estate consists of both movable and immovable property.

But if the father give a deduction of a twentieth part and so forth, to a virtuous or qualified eldest son and the rest, it is not an unequal distribution; for it is not of the nature of an unequal distribution; and the allotment of greater or less shares only is forbidden.

258. As the father should give to his son his proper share, so should he give to his grandson whose father is dead, and to his great-grandson whose father and grandfather are dead, shares which their father and grandfather were respectively entitled to have.

"Should an unequal distribution of the property inherited from the grandfather be nevertheless made, a second partition cannot be requested, but the father is guilty of a moral offence; as is intimated by Jñānātya-vāhana in these words: 'unequal distribution made by the father is only lawful (morally considered,) in respect of property acquired by himself.' Consequently, since the father has full power over wealth which he himself acquired; his unequal distribution of it is lawful; but in respect of property inherited from the grandfather, that (unequal distribution morally considered) is unlawful. This appears to be his meaning."

Thus Jagan-nātha has expressed a new opinion on the plea of such being the meaning of Jñānātya-vāhana. This is not however right. For if such had been the meaning of that author, then, as in respect of sale and gift he has said: 'since it is denied, that a gift or sale should be made, the precept is infringed by making one; but the gift or transfer is not null' (32,) so also in respect of partition of ancestral real property, he would have declared a similar opinion. But neither he nor

---

* See Nos. pp. 263, 265, and Dā. kṣra. comp. p. 95. † See Dā. bhāṣ. pp. 296-68.
any of the leading authorities of the Bengal school has laid down that if the precept of the law is infringed in the distribution of ancestral real property, the partition shall not be invalid. It must therefore be understood to be their opinion that unequal distribution made by a father of property ancestral is immoral as well as invalid. Add to this, in the following case, it has been established by a mass of authorities, and determined after an ample discussion, that unequal distribution of ancestral real property is illegal and invalid.

_Bhawání-charan Bánarjea, Appellant versus the heirs of Rám-kánta Bánarjea, Respondents._

**Case**

The appellant in this case brought an action in the Zillah Court of the 24-Pergunnahs against his father Rám-kánta, his brothers Gayá-rám and Ánanda-chander, and against Musst. Tárá-mansi and Musst. Párbatí, wives of his brother Lakkhi-náráyaṇ. A short time before the institution of the suit, Rám-kánta had executed a kisah-námah or deed of partition, allotting unequal shares of his estate, movable and immovable, ancestral and acquired, among his sons, after deducting a small portion of the estate for his own support and for charitable purposes. The deed of partition was duly registered; but on an attempt being made to carry it into effect, this suit was instituted.

The objections urged by him against the validity of the deed of partition are:—that it was written without his knowledge; that his father was more than eighty years of age when he executed it, and not in full possession of his senses; that during the life-time of his brother Lakkhi-náráyaṇ, the wives of that person could not be legally included in the deed, as they had no right to a share; that the deed included his exclusive property; and that the deed contained no specification of the mercantile concerns or of the patrimonial estate and so forth.

The defendant Rám-kánta pleaded in answer that he had a right to make such partition among his sons, as he considered proper, of his estate real and personal; that with respect to Lakkhi-náráyaṇ, he had been excluded on account of his extravagance and bad conduct, and his share assigned to his wives, in order that he might not be left wholly destitute; that all the ancestral estate had been included in the deed of partition; and lastly, that he, Rám-kánta, would hereafter make such disposition of the mercantile concerns as he should judge proper.
The Zillah Judge was of opinion that, as the plaintiff was not a party to the deed of partition, that instrument was invalid and illegal; as it was incumbent on the defendant Rám-kánta to have obtained the consent of all his sons previously to making a partition among them of joint ancestral property. A decree was therefore passed for setting aside the deed of partition as void and of no effect. Possession, as usual, of what he then held and had personally acquired, was awarded to the plaintiff, the joint property to be legally distributed after the death of Rám-kánta.

On appeal to the Provincial Court of Calcutta, the above decree was considered as erroneous in every respect. The title of the plaintiff to the immovable property claimed by him, on the ground of it being his own exclusive acquisition, was considered as not being proved; and his claim to a third of the ancestral property was held to be inadmissible, because during a father's lifetime a son cannot sue for a division of such property; Rám-kánta the father, however, having demised pending the appeal, his heirs were declared to be at liberty to sue, if dissatisfied, in a court of justice, when the division of the property of the deceased would entirely depend on exposition of the Hindu law.

This decision was appealed from to the Sudder Dewanny Adawlut. Bhawání-charaṛ, while the appeal was pending in the Provincial Court, presented a petition to that Court, praying that the property of Rám-kánta might be attached, in order that, after the death of that person, he might be able to secure his legal share of it. This petition was complied with, and an order was issued accordingly for the attachment; but Rám-kánta petitioned the Superior Court to prevent the execution of this order, on the grounds that the deed of partition executed by him had not been carried into effect, that he still retained exclusive possession of his property, and that so long as he lived no one was competent to prefer a claim to any part of it, movable or immovable, ancestral or acquired. These objections appeared to the Superior Court to be founded on law, and the Provincial Court was directed to withdraw the order of attachment.

Under these circumstances, the provisions of the deed not having been carried into effect. Mr. Fombell, the second Judge of the Sudder Dewanny Adawlut before whom the cause was first heard, was of opinion that the merits of the case could be ascertained only by a re-
The defendant, Ram-Kishen, pleaded in his defence that he had been assigned a share of the land as per the partition deed of the deceased. The court, however, found that the partition deed was null and void as it was signed under duress and coercion.

The objection raised by the parties regarding the partition deed was that it was being made to carry it into effect. The court, however, ruled that the partition deed was invalid as it did not comply with the provisions of the law. The court further stated that the partition of the property was illegal as it was done without the consent of all the parties involved. Therefore, the court declared the partition deed null and void.

The case was appealed to the higher court, and the court upheld the decision of the lower court. The court also ruled that any partition of property done in violation of the law is null and void.

The judgment was critically analyzed by the legal community, and it was agreed that the court had correctly interpreted the provisions of the law. The case was cited as a landmark judgment in property law, and it set a new standard for the partition of property in India.
...ing an unequal distribution was made through perturba-
...ced by disease or the like, or through irritation, 
...ne of his sons; in which case the said deed of partition 
...legal and invalid.

...event of possession not having been given of the pro-
...the deed of partition, to the parties therein mention-
...of his dying without altering or revoking the 
...any other disposition of the property specified in it, 
...nding on the parties therein mentioned and their 

...du law Rám-kánta was not authorised to grant 
...y to the wives of a living son, excluding that son 

...above opinions the second Judge observed, that 
...the second question was con-
...of the case, all parties having admitted that 
...uted by Rám-kánta had not been carried into 
...and that he had not made any other disposi-
...the law-officers having distinctly declared the 

...ences to be nugatory and of no avail. The 
...corded his opinion that so much of the decree 
...versed that part of the Zillah court's de-

...in possession of the property then alleged 
...right (although disputed by the defen-

...d the Judge,) should be affirmed, but that 

...ally maintains the validity of the deed of 

...nd that such part of the decree of the 

...deed as inadmissible should be affirmed:

...case was left for the sitting of another 

...was brought before the senior Judge; 

...to the Pandits, partly with the view 

...the ground of decision in the pre-

...be provisions of the Hindu law in 

...tion, executed by Rám-kánta, to be 

...be rendered nugatory and of
ference to the Hindu law officers. The deed of partition was therefore referred to them, and replies were required to the following questions:

1st. Is such a deed valid according to Hindu law, whether the property specified therein was the ancestral or acquired property of Rám-kánta, the person executing the same?

2nd. In the event of possession not having been given of the property specified in the deed of partition, to the parties therein mentioned by Rám-kánta, and of his dying without altering or revoking the same, or making any other disposition of the property specified in it, is such deed binding on the parties therein mentioned and their heirs after the death of Rám-kánta?

3rd. Was Rám-kánta authorised by the Hindu law, in the disposition of the property in question, to exclude one of his sons from all participation therein, and grant shares to the two wives of the said son?

To the above interrogatories the Pappítas delivered the following answers:—

1st. The Hindu law prescribes two rules for the distribution, by a father, among his sons, of ancestral property. The first is, to divide it into twenty parts, and having made a deduction of one twentieth for the eldest, equal shares of the residue are to be allotted to all his sons.* The second is, to make an equal distribution among all his sons, without deducting any specific share for the eldest. As the father cannot legally make an unequal distribution of ancestral property among his sons, according to his will, the deed of partition, as far as it goes to make such unequal distribution, is not valid, and is not binding on the parties therein mentioned. With respect to acquired property, the law permits a father to make an unequal distribution of his own acquisitions among his sons; if he be desirous of giving more to one son as a token of esteem on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, the father so doing acts lawfully; therefore the deed of partition, as far as it relates to the acquired property, is binding on the parties mentioned in it and their heirs, unless the

* Vide Partition among brothers.
deed awarding an unequal distribution was made through perturbation of mind, occasioned by disease or the like, or through irritation, against any one of his sons; in which case the said deed of partition is absolutely illegal and invalid.

2nd. In the event of possession not having been given of the property specified in the deed of partition, to the parties therein mentioned by Rám-kánta, and of his dying without altering or revoking the same, or making any other disposition of the property specified in it, such deed is not binding on the parties therein mentioned and their heirs after the death of Rám-kánta.

3rd. By the Hindu law Rám-kánta was not authorised to grant shares of his property to the wives of a living son, excluding that son from all participation, unless there should be a valid reason for that measure.

After inspecting the above opinions the second Judge observed, that the answer delivered by the Pandits to the second question was conclusive as to the merits of the case, all parties having admitted that the deed of partition executed by Rám-kánta had not been carried into effect during his life-time and that he had not made any other disposition of his property. and the law-officers having distinctly declared the deed under such circumstances to be nugatory and of no avail. The second Judge therefore recorded his opinion that so much of the decree of the Provincial Court, as reversed that part of the Zillah court's decree which left the plaintiff in possession of the property then alleged to be held by him in his own right (although disputed by the defendants, and not investigated by the Judge,) should be affirmed, but that the part of it which virtually maintains the validity of the deed of partition should be reversed, and that such part of the decree of the Zillah court as rejects the said deed as inadmissible should be affirmed: but the final decision in this case was left for the sitting of another Judge. Subsequently the cause was brought before the senior Judge; and two other questions, were put to the Pandits, partly with the view to define, as accurately as possible, the ground of decision in the present case, and partly to ascertain the provisions of the Hindu law in other analogous cases.

1st. Supposing the deed of partition, executed by Rám-kánta, to be a legal and valid instrument, would it be rendered nugatory and of no
avail from the circumstance of the distribution specified in it not having been carried into effect during the life-time of Rām-kānta, although the opposition shown by the plaintiff prevented its being carried into effect?

2nd. If Rām-kānta in his life-time had put all the parties, excepting the plaintiff, into possession of the shares allotted to them in the deed respectively, and had divested himself of all proprietary right, would such distribution of the property, movable and immovable, whether acquired or ancestral, be valid (notwithstanding the declared illegality of an unequal distribution of ancestral immovable property)?

The Pañḍita differed from each other on these points. The answer delivered by Chaturbhuj Pañḍita was to the following effect:—

1st. Supposing the deed of partition to be a legal and valid instrument, still a title deed, in virtue of which possession has not been taken, cannot be received in law as evidence of right, and there is no provision in the law to make such deed available, even though possession had not been obtained solely by reason of the opposition shown by an adverse party. The law declares further that this possession must have been in sight of the adverse party, without let or molestation on his part, and that possession for three successive generations even is not sufficient, unless it has been maintained in sight of the adverse party and with his acquiescence. Now, if by reason of the opposition created by the plaintiff, who in this case has stood forward as the adverse party, the defendants did not, during the life-time of Rām-kānta obtain possession of the party specified in the deed above alluded to, it cannot be deemed valid or binding on the parties, for the reason before assigned; viz., that a title deed un-accompanied by possession must be disallowed as evidence of right.

Some of the authorities cited in support of the above opinion are as follow:—

4th. Pita-maha-sanhitā:—"Occupancy alone is not sufficient to constitute right without a title, nor will the production of a title suffice unsupported by occupancy. It is therefore determined that the existence of both is essential to constitute a right"
5th. *Vrihaspati-sanhitā*—"The right to land does not accrue from mere occupancy, nor by the production of a title alone. From the union of both results a right, not otherwise."

7th. *Nārada*—"For the first, gift is evidence (of right); for the second, occupancy with a title; for the third, occupancy of long and uninterrupted continuance."

9th. *Jāgnyavalkya*—"Where there has not been possession even for a short time, a title is of little avail. But where occupancy exists in one part, it may be said to exist with regard to the whole."

11th. *Vrihaspati*—"Immovable property acquired by partition, by purchase, by descent, or from the king, is confirmed by occupancy, and lost by neglect."

The answer delivered by *Chaturbhuja* to the second question was to the following effect:—

Supposing the deed of partition executed by *Rām-kānta* to have been acceded to during his life-time by all the parceners (excepting the plaintiff) whose names were therein specified; that they obtained actual possession of their respective allotments, with the exception, however, of the particular share of immovable property in the possession of the plaintiff; and that *Rām-kānta* divested himself of all proprietary right in the estate, yet the said deed specifies two descriptions of property, viz. ancestral immovable property and acquired property, real and personal; now because no mention occurs in the *Dāya-bhāga* or other law tracts of the legality of an unequal distribution of ancestral immovable property, beyond the authorised deductions of a twentieth, half a twentieth, &c.; because a father has not unlimited discretion with respect to ancestral immovable property, and because where the *Dāya-bhāga* upholds the validity of a prohibited gift or sale it is always understood as a proviso, that the donor be vested with power to make such transfer, an unequal distribution (over and above the authorised deductions before alluded to) of ancestral immovable property cannot be maintained as valid. If the father make an unequal distribution among his sons of his own acquisitions, his motive must be looked into. If he were actuated by the desire of giving more to one son as a token of esteem on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of
his incapacity, or through favor by reason of his piety, such distribution
is valid and must be upheld. But if such distribution were made by
the father through perturbation of mind occasioned by disease or the
like, or through irritation against any one of his sons, or through
partiality for the child of a favourite wife, it cannot be upheld; and
the reason is, because it is not only not conformable to law but it does
not fall under the provision of the Dáya-bhága making a gift valid
even though prohibited, as that provision presupposes a power in the
donor, and as a father under the circumstances above mentioned, has
been declared to have no power in the distribution of the estate.

Authorities:—

1st. Dáya-bhága:—“Jáñnyaávalkya has declared, the ownership of
father and son is the same in land which was acquired by his father,
or in corrodys, or in chattels. The meaning of the above is as set forth
by Dháreshvará: ‘A father giving allotments at his pleasure has equal
ownership with his sons in the paternal grandfather’s estate. He is
not privileged to make an unequal distribution of it at his choice, as
he is in regard to his own wealth.’”

2nd. Vishnu:—“When a father separates his sons from himself,
his will regulates the division of his own acquired wealth; but in the
estate inherited from the grandfather, the ownership of father and son
is equal.”

3rd. Dáya-krama-sangraha:—“A father has not the power to
make an unequal distribution of ancestral property, consisting either
of land, or a corroyd, or slaves, even though any of the causes before
mentioned, namely,—the superior qualifications of one particular son
&c. should exist, and the text of Jáñnyaávalkya which declares, ‘the
ownership of father and son is the same in land which was acquired,
by his father, or in a corroyd, or in chattels,’ is intended to restrain
the exercise of the father’s will, for it is impossible that, according to
the literal meaning of the text (prescribing equal ownership between
father and son) sons should have ownership therein so long as the fa-
ther, the owner of the ancestral property, continues to survive.”

4th. Dáya-bhága:—“Among his sons a father may make distri-
bution, either by giving to the first born or withholding from him the
deduction of a twentieth part* of the grandfather’s estate. But if he

* Vide partition among brothers.
make an unequal distribution of his own acquired wealth, being desirous of giving more to one son as a token of esteem, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of piety, the father so doing acts lawfully."

5th. Dāya-bhāga:—"But the following text of Nārāda: 'A father who is afflicted with disease, or influenced by wrath, whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of his estate,' relates to a case where the father through perturbation of mind by disease or the like, or through irritation against any one of the sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law."

The answer delivered by Shoḥhā Shāstrī, the other Paṣḍit, to the first question, was as follows:—

It is assumed that the deed of partition executed by Rām-kānta in favour of the defendants, is a legal and valid instrument: but it is at the same time stated that, during his life-time, those in whose favour it had been executed did not obtain possession of their respective allotments. This circumstance was occasioned, it appears, from Rām-kānta's inability to give possession in consequence of the opposition shown by the plaintiff. The deed of partition, however, sufficiently demonstrates the relinquishment of right on the part of Rām-kānta, and extinction of property with regard to the estate in question, the title to which became consequently vested in those in whose favour the deed of partition was executed. And as the want of possession by those persons did not proceed from neglect, their title remains unimpeached, nor can any interval of time, under such circumstances, annul their privilege of taking possession of their respective allotments. The deed of partition must therefore be upheld as valid and binding on the parties.

The following is one of the authorities cited in support of the above opinion.

Vṛiharpāti:—"The omission to interfere by the owner, even though possession has been held by the adverse party for three successive
generations in his presence, will not avail against him, provided there exist some good cause for his non-interference, nor will possession held for the same length of time by a person standing within the degree of relationship (to the owner) termed the Sapiṣṭa or Sakula, avail against the owner.

The answer delivered by Shobhā Shāstrī to the second question was to the following effect:—

The deed of partition under the circumstances specified in the interrogatory is invalid and not binding on the parties mentioned in it, as far as it goes to make an unequal distribution of the ancestral immovable property, but as far as it relates to the property acquired by Rām-kānta it must be upheld as valid and binding on the parties concerned: because a man is vested with full authority over his own acquisitions, which authority is defined to consist in the power of aliening it at pleasure. It must, however, be observed that, where a father makes an unequal distribution of his own acquired property by reason of any one of the legal causes, such as the greater filial piety of one son, his having a numerous family, incapacity, &c. &c. he (the father) does not incur the guilt attaching to a transgression of the law; but if, on the other hand, he make such unequal distribution by reason of his mere arbitrary will and uninfluenced by any one of the causes above mentioned, then, (as in the case of a gift against which a prohibition exists) he incurs the guilt occasioned by an infringement of the law; but the distribution must be upheld, as valid and binding on the parties whom it concerns. This constitutes the difference. But as the father has not full authority (as defined above) over the ancestral immovable property, any distribution he may make, other than that which the law directs, must be considered invalid, and not binding on the parties concerned.

Authorities:—

1st. Dāya-bhāga:—"So Vīṣṇu says: 'When a father separates his sons from himself, his will regulates the division of his own acquired wealth: but in the estate inherited from the grandfather the ownership of father and son is equal.' This is very clear. When the father separates his sons from himself, he may by his own choice give them greater or less allotments if the wealth were acquired by him-
self, but not so if it were property inherited from the grandfather, because they have an equal right to it. The father has not in such case an unlimited discretion."

2nd. Dáya-bhága:—"But if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one as a token of esteem on account of his good qualities, or for his support on account of a numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety, the father so doing acts lawfully. Jágnyávalkya declares that: "A lawful distribution made by the father among sons, separated with greater or less allotments, is pronounced valid." So Vrihaspati: "Shares which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them; else they ought to be chastised." Nárada likewise: "For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution; for the father is lord of all." Since the circumstance of the father being the lord of all the wealth is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution made by the father is lawful only in the instance of his own acquired wealth."

3rd. Dáya-bhága:—"The father has ownership in gems, pearls, and other moveables, though inherited from the grandfather and not recovered by him, just as in his own acquisitions, and has power to distribute them unequally, as Jágnyávalkya intimates: 'The father is master of the gems, pearls, and of all (other movable property); but neither the father nor the grandfather is so of the whole immovable estate.'"

From the above conflicting opinions of the Pándits, and the authorities cited in support of them respectively, it will appear that they differed in two essential points; the first Pándit asserting that a title under which there had not been occupancy, is of no avail; and the second contending that, to have this operation, the non-occupancy must be proved to have arisen from the wilful neglect of the party assuming the title: the first Pándit also holding that an unequal distribution made by a father of his own acquired property among his sons, cannot be binding on them, unless the father in making such unequal distri-
bution had been influenced by some of the motives which the law enumerates as sufficient to authorise it; the other, on the contrary considering such unequal distribution to be, though a sinful act, valid and binding on the parties concerned. The chief Judge, after inspecting these opinions, gave notice to the parties that a fort-night should be allowed them, previously to a final decision with a view of affording them an opportunity of adducing proofs of the accuracy of the doctrines maintained by the Pāṇḍītas in favor of their respective claims.

Accordingly proofs and objections were filed by all parties.

It being, however, satisfactorily ascertained from the replies of the Pāṇḍītas to the first interrogatories, that the deed of partition executed by Rām-kānta was in several respects illegal; the necessity of ascertaining the relative accuracy of the conflicting opinions of the Pāṇḍītas delivered in reply to the queries subsequently put to them, was in this case superseded. In those queries it was hypothetically assumed, for the reason, already stated, that the deed of partition was legal, and had been carried into effect during the life-time of Rām-kānta; which, from the admission of all parties and of Rām-kānta himself in the petition presented by him to the Sudder Dewanny Adawlut against the attachment ordered by the provincial Court, was certainly not the case. Considering, therefore, the deed of partition (which was never carried into effect) to be invalid, and not binding on the parties mentioned in it, the senior Judge concurred in the opinion expressed by the second Judge; and a final decree was passed accordingly in conformity to that opinion.—S. D. A. R. Vol. II. pp. 201—215.

* Although the Pāṇḍītas of the Sudder Dewanny Adawlut have differed upon some points in their Vyavasthās delivered in this case, yet they concur in opinion that a father, in the partition of ancestral immovable property amongst his sons, is not authorised by the authorities of Hindu Law, which are admitted to prevail in the province of Bengal, to make any unequal distribution of such property, beyond a twentieth part, in favor of the eldest son. Chaturbhujj states on this point, that "because no mention occurs in the Dāsa-bhāja or other law tracts, of the legality of an unequal distribution of ancestral immovable property, beyond the authorised deductions of a twentieth, half a twentieth ōc.; because a father has not unlimited discretion with respect to ancestral immovable property; and because where the Dāsa-bhāja upholds the validity of a prohibited gift or sale, it is always understood as a proviso that the donor be vested with power to make such transfer; an unequal distribution (over and above the authorised deductions before alluded to) of ancestral immovable property, cannot be maintained as valid." In like manner...
FATHER'S SHARE IN THE SON'S ACQUISITIONS.

Respecting this the Dāya-bhāga says:—"The father has a double share even of the property acquired by his own son. For the expression is general: 'Let him reserve two shares;' or 'he may take two shares.' Kātyāyana declares it very explicitly: 'A father takes either a double share, or a moiety of his son's acquisition of wealth.' Here the father has a moiety of the goods acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares and the rest take one share each. But if the father's property have not been used, he has two shares; the acquirer as many; and the rest are excluded from participation. Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety. A father destitute of such qualities has a double share in right merely of his paternity. Therefore, the meaning of the text is, that a father may reserve for himself two shares of wealth which has descended in succession (from ancestors,) or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be—Dā. bhā. pp. 46—49.

The explanation of the above as given by Śrī-krishna Tarkālakāra is as follows:—"This declaration of the father's participation of half or a double share in the son's acquisition on the ground of his being and not being endowed with excellent qualities must be known in the case of participation by many sons. But in the case of a single son, who is the acquirer, being participator, the father shall have the double share if endowed with excellent qualities, otherwise half. This is the equitable difference—to be considered by the learned." Commentary on the Dāya-bhāga. Sans. p. 65.
The participation by many sons may only take place in the case of acquisition being made by the use of the joint stock.—The detail whereof is as follows:—

259. The father endowed with excellent qualities shall take half of the property acquired by the aid of his funds, the acquirer two shares, and the other brothers one share each, while the father not endowed with such qualities shall take two shares, the acquirer two shares, and the other brothers one share each of the property in question.—But if the acquisition were made without the adventure of the father's stock,—the father endowed with the qualities shall take two thirds, and the acquirer one third, while the father not endowed with the qualities shall take half, the acquirer also half.

260. The father endowed with excellent qualities shall take two shares, and the acquirer one share, while the father not endowed with such qualities shall take half, and the acquirer also half of the property acquired by the aid of the father's funds. But if the acquisition were made without the use of the father's stock,—the father endowed with the qualities shall take two thirds and the acquirer one third, while the father not endowed with the qualities shall take half, the acquirer also half.

But a father endowed with the required qualities not being found in the present (kali) age, now the principle applying to a father not endowed with the excellent qualities is alone in use. This therefore is the decision:

Vyavastha. 361. Where there are many sons, there, of the acquisition made with the use of the father's stock, two shares go to the father, two shares to the acquirer, and one share goes to each of the other brothers; while of the acquisition made without the use of the father's funds, half goes to him, and half to the acquirer, the other brothers being excluded. But where there is but one son, there the father takes half of his son's acquisition made with or without the use of patrimony, and the acquirer takes the remainder.


As a son partakes of wealth acquired by his father, so father is likewise entitled to partake of property acquired solely by his son. This is the only accurate exposition.—Coleb. Dig, Vol. III. p. 55.
The above decision, though prevalent, does not appear to be just, inasmuch as a brother's participation of a share, in the acquisitions made solely by the use of the father's funds and not his personal aid also, it not equitable when the father himself received a half or double share of the same.

Vyavastha. 262. The father's receiving two shares relates to the acquisition made by a son without the use of his (the father's) funds, but by the employment of the brothers' stock; the acquirer also takes two shares, and, the wealth common to all brethren having been used, they also are entitled to one share each.*—Dá. T. Sáus. p. 24.

Vyavastha. 263. When the property is acquired by any one son through his own labour on his brother's stock, the father shall in that case have two shares, and both his sons one share each. But if it were acquired on his brother's stock and on his own, by his own labour, the acquirer shall have two shares, the father two shares, and he, who supplied funds, shall have one: and in both cases the rest of the brethren shall be excluded from participation.* (Coleb. Dig. Vol. III, p. 57.)

Vyavastha. 264. Where a property has been acquired with the aid of the father's funds and personal labour, there a moiety belongs to the father, two shares goe to the acquirer, and one to each of the other brothers.

"The brethren participate in that wealth which one of them gains by valour or the like, using any common property either a weapon or a vehicle." In expounding this text of Vyāsa, Raguha-nandana says: 'brethren, are merely an instance from which uncles and the rest should be also understood. There is equal reason why sons, grandsons, and great grandsons in the male line shall share in the reversion of the property belonging to the common ancestor; and so does the great grandson in the male line; for the son of a son also belongs to

* A father shall take two shares out of the property acquired by his son through the use of wealth common to all the brethren and without employing the several property of the father.—Raguha-nandana. Coleb. Dig. Vol. III, p. 54.

Raguha-nandana—"When the brothers' stock was employed, the father shall have two shares, the acquirer two shares, and the rest one each; and that seems accurate.—Ibid. p. 56.
his ancestor, as the slave of a slave belongs to the master: this is also reasonable. If therefore property be acquired by the son of a son through supplies from his grandfather's estate, the grandfather shall have half, the uncles and the rest a share each, and the grandson, who acquired the property, two shares: but if no supplies were received from the grandfather's estate, the uncles and the rest shall not participate.*

Vyavastha. 265. The paternal grandfather does not partake of the wealth acquired by his grandsons whose own father is living, but that father alone (does participate.)*

Vyavastha. 266. If, however, the acquisition was effected by the use of his funds, the paternal grandfather may take one share in proportion to the wealth (employed.)*

Vyavastha. 277. In the case of an acquisition made by the son of a daughter, should the property of the maternal grandfather have been employed, he shall take a share proportionate to the capital used; and the maternal uncles and the rest shall have no shares. But if the acquisition were made without such use of property, the maternal grandfather shall have no share.*

Legal opinion admitted by the sudder court, and examined and approved of by Sir William Macnaghten.

Q. A man had four sons, the eldest of whom died before his father, leaving two sons, to whom he bequeathed by will certain self-acquired property. The father and three brothers of the deceased severally claimed share of the property so bequeathed. Supposing the deceased to have acquired the property solely by his own funds and personal exertions, in this case, are all the claimants entitled to share such acquisitions; and if so, in what proportion? On the other hand, supposing the property to have been acquired with the aid of the father's funds and labour, in this case too, how will the property be divided among the individuals in question? What is the law as to their right of sharing the property, whether living together or separately in respect of food?

R. Of the four brothers, if one (whether he lived jointly with the rest or separately in respect of food) bequeathed his self-acquired property to his two sons and died before his father; in this case, if the property have been acquired with the aid of the father's

the father, two to the acquirer, and one to each of his brothers: if acquired without any aid, into two parts, the father taking one, and the acquirer one.

funds and personal labour, a moiety of such acquisitions belongs to the father, and the other half will be made into five parts, of which two will go to the acquirer, and one to each of the three brothers: supposing the property to have been acquired without the aid of the father's funds or labour, in such case the brothers have no right to any share, but the father is entitled to a moiety. In both cases, the acquirer's sons are entitled to the portion to which their father was entitled. This opinion is conformable to the Dāya-bhāga, Dāya-tattva, and other authorities.

Authorities:

The text of Kātyāyana cited in the above authorities;—"A father takes either a double share, or a moiety, of his son's acquisition of wealth."

"Here, the father has a moiety of the goods acquired by his son at the charge of his estate; the son who made the acquisition, has two shares; and the rest take one a piece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation."—The Dāya-bhāga.

Sudder Dewanny Adawlut.—Macn. H. L. Vol. II. Case 18, pp. 163, 164.

Sir William Macnaghten writes: "According to the law of Bengal, the father may make an unequal distribution of property acquired by himself exclusively as well as of movable ancestral property, and of property of whatever description, recovered by himself, retaining in his own hands as much as he may think fit; and should the distribution he makes be unequal, or should he without a just cause exclude any one of his sons, the act is valid though sinful. According to Jñātavāhana, Raghu-nandana, Śrī-krishṇa, and other Bengal authors, when partition is made by a father, a share equal to that of a son must be given to the childless wife, not to her who has male issue; that where he (the father) reserves a large portion for himself, his wives are not entitled to any specific share, but must be maintained by him; and that where unequal shares are given to sons, the average of the shares of the sons should be taken for the purpose of ascertaining the allotments of the wives." (Vol. I. pp. 44, 47, & 49.)
These, however, are not quite correct and accurate as regards the doctrine of the Bengal school, as will be found on reference to the *Vyavas. sthās* Nos. 230—236 & 240 & 184, and their corroborative authorities and remarks, all of which are the doctrines of, and almost all of which are quoted from, the authorities alluded to by the learned gentleman.

SECTION II.—PARTITION BY BROTHERS.

**The Period of Such Partition.**

268. If the father's right of property be annulled by death, degradation for sin, disregard of temporal matters, or by the quitting of the condition of a householder,* or if the father chooses while his right still subsists, the sons become entitled to partition: from that time therefore, does the period of partition commence†.

269. However, partition is not lawful, while the mother lives (a)—*Dā. bhād.* pp. 54—56.

(a). That is, such partition is unlawful in respect of religious duties, and is only lawful in respect of property.—See Coleb. Dig. Vol. III. p. 78.

**Authority.** For brethren a common abode is ordained so long as both parents live: but after their decease, religious merits of separated brethren increase.—*Vyāsa.* After the death of the father and mother, the brothers, being assembled, will equally divide the paternal estate; for they have not power over it while they (parents) live. *Manu.* However,—

270. With the mother's consent, the partition is lawful.—*Dā. bhād.* p. 57.

---

* Vide ante, pp. 9—11.

† After the natural or civil death of the father, either let the sons live together, or let them divide the paternal estate. This alternative is pronounced by Manu:—'Either let them live together, or, if they desire (separately to perform) religious rites, let them live apart; since religious duties are multiplied in separate houses, their separation is therefore legal (and even laudable.)
The condition "and when the sisters are married" does not intend a
distinct period, but inculcates the necessity of disposing of them in
marriage.—Dā. bhā. p. 21.

The alleged power of sons to make a partition, when the father is
incapable of business (by reason of extreme age, &c.) has been asserted
through ignorance of express passages of law (to the contrary.) Thus
Hārīta says: "While the father lives, sons have no independent
power in regard to the receipt, expenditure and bailment of wealth.
But, if he be decayed, remotely absent, or afflicted with disease, let
the eldest son manage the affairs as he pleases." So Sāṅkha and
Likhitā explicitly declare: "If the father be incapable, let the eldest
manage the affairs of the family, or, with his consent, a younger brother
conversant with business. Partition of the wealth does not take place,
if the father be not desirous of it, when he is old or his mental
faculties are impaired, or his body is afflicted with a lasting disease.
Let the eldest, like a father, protect the goods of the rest; for (the
support of) the family is founded on wealth. They are not independent
while they have their father living, nor while the mother survives."
These two passages, forbidding partition when the father is incapable
of business, or when he labours under a lasting disorder, direct that
the eldest son should superintend the household, or a younger son who
is conversant with business. The text last cited, therefore; runs "not
if the father desire it not," and it was by mistake that it was written
"if he be incapable of business, partition of the wealth takes place,

EXTENT OF THE SHARES OF THE BROTHERS.

Two modes of partition among brothers alike by class* are propounded:
: namely, either with deductions or else an equal division.† The
deductions are of various kinds as ordained by the different sages.
They are as follows:—

* In ages other than the Kali, brothers born of a mother of different class from that of
the father were also entitled to share. Now however it is useless to state the particulars
of the same, inasmuch as the marriage with a girl of a different class having been pro-
hibited in the Kali age, the heritable right of a son born of such a girl is annulled.

MANU:—"The portion deducted for the eldest is twentieth part (of the heritage,) with the best of all the chattels; for the middle most, half of that, or a fortieth; for the youngest, a quarter of it, (or an eightieth.) The eldest and youngest respectively take their just mentioned portions; and if there be more than one between them, each of the intermediate* sons has the mean portion (or fortieth.) Of all the goods collected, let the first born take the best article, whatever is most excellent in its kind, and the best of ten (cows or the like.) But, among brothers equally skilled in performing their several duties, there is no deduction of the best in ten (or the most excellent chattel; though some trifle, as a mark of greater veneration, should be given to the first born. If a deduction be thus made, let equal shares of the residue be ascertained (and received;) but if there be no deduction, the shares must be distributed in this manner: 'Let the eldest have a double share, and the next born a share and half, the younger sons must have each a share: Thus is the law settled.'† A younger son being born of the first married wife, after an elder son had been born of a wife last married, it may be a doubt in that case how the division shall be made. Let the son born of the elder wife take one most excellent bull deducted from the inheritance; the next excellent bulls are for those who were born first, but are inferior on account of their mothers, (who were married last.) A son, indeed, who was first born, and brought forth by the wife first married, may take one bull and fifteen cows; and the other sons may then take, each in right of his several mother: such is the fixed rule.”†

* 'Eldest'—That is, first by birth among brothers, born of mothers or step-mothers alike by class. Thus MANU:—"Between sons born of wives equal in class and without any other distinction, there can be no seniority in right of the mother, the seniority ordained by law is according to the birth."—So the eldest is the first born of all the sons; the youngest is the last born; and all the intermediate sons are middle.

The fortieth part should be computed on the whole estate, not on the residue after deducting a twentieth part: for that is expressly declared by the term 'half of that.' The same should be also affirmed in respect of the eightieth part.—Coleb. Dig. Vol. II. p. 549.

† This however must be understood as applicable to the case where the eldest and the one next to him are endowed with learning and other qualities, and the younger brothers are devoid of any good quality.—Kulśha Bhatta.

‡ Thus MANU delivers four modes of unequal partition; and since partition cannot be made in four ways in the same case, it must be affirmed that he intends a distinction according to circumstances. Such is the opinion of Kulśha Bhatta, Chandeshwar, and others.—Coleb. Dig. Vol. II. p. 553.


Manu and Viśhāpati:—"All the sons of twice born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first born his deducted allotment."

Viśhāpati:—"Two modes of partition are expressly ordained for co-heirs: one, in the order of seniority; the other, by allotment of equal shares. The eldest (or he) who is pre-eminent by birth, science, and virtuous qualities, shall receive two shares of the heritage; the rest shall share alike: but he is venerable like their father."

Vasishṭha:—"Partition of heritage among brothers shall be thus made: the eldest shall take a double share, and the tithe of cows and horses; the youngest shall have the goats and sheep, and one house; the sword and other black iron, and the furniture of the house, shall belong to the middlemost."

Viśvānu:—"Let sons produced by wives of equal class receive equal shares, but give the best chattel as a deducted allotment to the first born."

Harīta:—"When a herd of kine is to be divided, let the rest of the brethren give a bull to the eldest brother, or give him the best chattel, leaving to him the images of deities and the patrimonial house, let them remove and erect other habitations: or if they remain in the same court, the best apartment shall be assigned to the eldest, and successively the next best to the others."

Apastamba:—"In certain countries a surena, a black cow, and the black produce of the earth, devolve on the eldest son, together with the utensils of the common father."

Sankha and Likhita:—"To the eldest son a bull shall be given, to the youngest, a house other than the father's habitation."

Gotama:—"A twentieth part of the heritage, a pair (of kine,) a car with beasts which have teeth in both jaws, and the bull kept for impreg

* The right of taking a double share too, is not confined to the case of primogeniture. Viśhāpati says:—'The eldest by birth, by science, and by good qualities, shall obtain a double share of the heritage.' Daś. śāstra. p. 39.
nation, shall belong to the eldest; cattle blind of one eye or old, and those of which the horns are broken, the tail hairless, shall belong to the middlemost, if there be two or more head of such cattle; a ewe, some grain, iron, a house, a cart and yoke, and one of every sort of quadruped, shall belong to the youngest, the residue shall equally be divided. One bull shall be the additional portion of an eldest son (born of a wife last married, or if) produced by the first married wife, he shall have a bull and fifteen cows; or the same deduction (which is granted to an elder son born of a wife last married,) shall be received by a younger son born of an elder wife. Or the first born shall first choose and take any one chattel, and ten head of cattle, (and the rest shall successively make a similar selection.)"

Citing the Scripture:—"Let equal shares be given to all without distinction, or let the eldest deduct the most excellent cattle; or let the first born take one of ten (cows and the like,) and let the rest share equally," the text of Boudháyana directs the best chattel to be given to the eldest, and one out of ten cows or other decade of homogeneous things.

Boudháyana:—"On the death of the father, the portion of the eldest son is, in the order of the four classes, a bull, a horse, a goat, and a sheep."

Náráda:—"To the eldest a greater portion shall be given, a worse (or inferior) share is ordained for the youngest; the rest shall have equal allotments, and an unmarried sister shall also have a portion."

Devala:—The mean portion (or fortieth part) is ordained for sons who have equal pretensions; but let the tenth part of the heritage be given to the eldest who conducts himself according to law."—Vide Coleb. Dig. Vol. II. pp. 546—587.

Thus the deductions ordained by the lawgivers are so different that it is impossible to reconcile them. It appears, however, clear that they may be given according to special circumstances. It appears moreover clear that those of the brothers who are endowed with good qualities are alone entitled to deductions; as is most explicitly declared by Viññápati:—"Of those sons he who is endowed with science* and good

* "Science"—Study of Vedas and other branches of the sacred literature: and that is peculiar to the first three classes, the bráhmana and the rest.
not only to deductions but also to their shares in the heritage, manifest from the following passage of the \textit{Viváda-bhángárña}\textsuperscript{a}: greater share in right of primogeniture, comprising the twen-part and so forth, is denied to an eldest son who is not virtuous, e following text.—‘All those brothers (whether first born or other) who are addicted to (any) vice, lose their title to inheritance. e as well as primogeniture is declared requisite.’ The conclu-arrived at on consideration of all the texts cited and commen-, &c. is, that good qualities render brothers entitled to deduc-, and that the extent or proportion of such deductions is ordained reference to priority or posteriority of birth. But in this (Kali) owing to brothers endued with such qualities as entitle one to stions† being rare,—

\textit{śvastha}. 271. The allotment of deductions has at present become impliedly obsolete.‡

\textit{śvastha}. 272. But even if there be a brother entitled† to a deduction, he cannot compel his brother others to give it to him.

\textit{śvastha}. This much as it is an honorific gift optional with the other brother others.§

\textit{śvātā-vāhana} admits that good qualities entitle a brother to a de- on and that the allotment thereof depends on the option of the

\textit{Ścience”—Study of the Vedas and other branches of the sacred literature: and peculiar to the first three classes, the Brāhmaṇas and the rest. The knowledge of the Vedas, the practice of the religious actions ordained by the not deceiving a younger brother, as well as other qualities, render one entitled to stion.—Śrī-kṛṣṇa’s commentary on the Dāṇḍa-bhāṣya, p. 80. † \textit{Vida} Coole, \textit{Dāṇḍa-bhāṣya}, p. 62; —Mann. H. L. Vol. I. p. 17. Consequently, the allotment of a deduction depends not only on good qualities of character but also on the option of the giver.

58
other brother or brothers; but he only mentions the instance of the eldest being entitled to a deduction of a twentieth part, and that of its allotment depending on the veneration of the younger brothers, whereas it is manifest from the authorities cited that all or any of the brothers endowed with good qualities are entitled to deductions, and that deductions are of various kinds.*

Jagan-nātha at last says: "At this time, in our country the practice of deducting a twentieth part or the like is almost wholly disused, but some chattel of small value is given to the eldest as a token of veneration."

Although the eldest brother deserves to get something more than the other brothers, by reason of his producing great spiritual benefits to his father by delivering him from the hell called put and so forth, yet the allotment thereof is dependent on the option of the younger brothers, inasmuch as it is not ordained by any lawgiver that the eldest can realize it by having recourse to law in case it be not given amicably.

"In low classes (the precedence of sons is regulated) by the goodness of their disposition. Among twins, (the eldest is he) who is first actually born."—Devala. 'In low classes,' i.e., in servile tribes: by the term expressed in the plural number, mixed classes, which adopt the duties of the servile tribe, are comprehended (in the text.) Among these precedence of seniority is regulated by conduct and good disposition. Consequently priority of birth does not entitle the Shādrea to deductions. Accordingly Vāchaspati holds that Shādreas have no additional portion in right of seniority of birth. Manu also says:—

"For a Shādrea is ordained a wife of his own class, and no other: all produced by her shall have equal shares, though she have a hundred sons." From the words 'equal shares' he refers that no deduction shall be made in right of primogeniture. "Of those sons, he who is endowed with science and good qualities is entitled to receive a greater portion." If it be alleged that as this text of Vrihaspati has a general import regarding deductions, why should not the Shādreas be

* This is affirmed by Jagan-nātha himself thus: "a deduction of a twentieth part, &c., is allowed by other brothers through affection and to preserve due respect, because the elder brothers are venerable. Such deduction concerns however the elder brothers who are endowed with virtues.—Colyer, Dig. Vol. II. p. 521.
entitled to deductions on account of good qualities? The reply is: no, they cannot be, inasmuch as they cannot be endowed with such qualities. Consequently,—

Vyāvastha: Shudras.

This opinion of Rāgu-nandana is precise.—See Dā. T. p. 56.

In ages other than the Kali, unequal partition was made among the brothers according to the seniority of their mothers in respect of classes. But in the present (Kali) age, the heritable right of a son born of a mother of a different tribe (from that of father) having become extinct in consequence of prohibition of marriage with a girl of a different tribe, that unequal distribution is become wholly obsolete.

"If there be many from one, alike in number, and in class, but born of rival mothers, partition must be made by them according to law, by the allotment of shares to the mother."—Vṛihṛṣṭi. "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among the mothers, is approved."—Vṛāṣa. The distribution if made according to these two texts cannot also be tantamount to unequal partition, inasmuch as partition is directed to be made if the number of the sons born of one mother of the same class be equal with that of the sons born of each of the (other) wives of their father: so that, after dividing the estate with reference to their mothers, if the sons subdivide it according to their own numbers, there is equal partition in the end. Had the above partition been directed even where the number of the sons born of each mother was unequal, then there would be apprehension of unequal partition; but such apprehension is removed by Vṛihṛṣṭi himself, thus: "Among the brothers who are equal in class, but vary in regard to the number (of sons produced by each mother) the shares of the heritage are allotted to the males, (not to their mothers)."

Jagannātha says:—'That rule directs partition to be made among the brothers through the medium of their mothers, when the number

* The qualities which entitle one to deducted allotments are: knowledge of the Vedas, practice of the religious acts ordained by the Vedas, not deceiving a younger brother, and the like. (Commentary on the Dāya-bhadga. Sans. p. 80.) But the Shudras are not qualified or allowed to study the Vedas.—See Coleb. Dig. Vol. II. pp. 578, 679.
of sons by the several mothers is equal, to avoid the trouble of distributing a very great number of shares. And when the subdivision is made, every son receives an equal share. This has been ordained by Vrihaspati to facilitate partition: There is no real difference.∗ This appears to be reasonable. Consequently,—

Vyavastha. 274. In the present age, the shares of the brothers are equal.

Authority. After speaking of a father, Harita says: “If he be dead, the partition of inheritance should be made equally.” So Usanas says: “The distribution among brothers born of women of the same tribe is ordained to be made equally.” So also Pothanasi says: “When the paternal inheritance is to be divided, the shares shall be equal.” Jagnavalkya too declares: “Let the sons divide equally the effects and the debts, after the death of both parents.”†

Vyavastha. 275. In a partition made between ourasa and dattaka sons, the ourasa son has two shares, and the adopted son (who must be of the same class with his father) takes one share.—Dd. Kra. sang. p. 110.

Vyavastha. 276. The grandsons whose father is dead, and the great grandsons whose father and grandfather are dead, are respectively entitled to shares of their father and grandfather (whom they represent;) and not to shares with reference to their number.

Authority. I. “Should a son die before partition, his son shall be made partaker of the estate, provided he has not received from his grandfather property sufficient for his support. He shall receive his father’s share from his uncle or his (uncle’s) son; and the same proportionate share shall be, according to law, allotted to all the brothers; (or if that grandson be also dead) let his son take the share; beyond him (lineal succession) stops.”∗—Jagnavalkya. If there be many sons of the deceased (son,) their father’s share only

∗ Coleb. Dig. Vol. II. p. 575; Vol. III. p. 110
† See Dd. dhd. pp. 61.62.
(and no more) should be subdivided and allotted amongst them. In like manner, on the extinction of right of the (late) owner’s grandson, his (the latter’s) share only shall be taken by his sons (the great grandsons of the late owner.)*—Dá. T. pp. 11&51.

Consequently, if the grandsons, having received allotments from the paternal grandfather in his life time, reside apart, and their uncles remain united with their own father, in that case, when these make a second partition, the grandsons shall have no share. However, grandsons are entitled to obtain partition of that property which had belonged to their paternal grandfather.—Coleb. Dig. Vol. III. p. 82.

II. But to grandsons by different fathers shall be allotted the portions of their respective fathers.†—JÁNYAVALKYA.

If one of the co-heirs, through confidence in his own ability, decline to take his share of the property inherited from his father, grandfather, or other ancestor, something should be given to him, be it only a prastās of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus Manu says: ‘If any one of the brethren has a competence from his own occupation and desires not the property, he may be debarred from his share, giving him some trifles in lieu of a maintenance.’ So Jányavalkya:—‘The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving some trifles.’ Dá. bid. p. 62.

* Consequently, if brethren live together after the death of their father, a brother shall receive a share when partition is subsequently made; or should one of the brothers die before his father, his son shall take his share; should he also die before his grandfather, his son shall receive the share; and if this last also be dead, his son shall not take the allotment; for he is more remote than the fourth in descent.—Coleb. Dig. Vol. III. p. 88.

† To grandsons, of whom the fathers are different, shall be allotted portions in right of their several fathers: all the grandsons succeed to the proper shares of their respective fathers. Consequently, so many shares should be formed as there are sons of the original proprietor, and shall be given to their respective sons; and let them take those shares, whether they be uterine brothers or born of different mothers, and whether they live together, or subordinate the shares according to the number of their own brothers respectively: such is the meaning of the text. This rule of adjustment is grounded on positive texts.—Coleb. Dig. Vol. III. pp. 6,7.
Zillah Hoogly. April 3rd, 1821.—Macn. H. L. Vol. II. Ch. 5, Case 5, (pp. 160, 151.)

Q. I. A person had three sons, the eldest of whom, having been separated from his father, lived apart. Afterwards the father died. In this case, are only those sons who lived with him, entitled to succeed him; or have all his sons an equal right of succession?

R. I. Supposing the father, by mutual free will and consent to have given some wealth out of his self-acquisitions to his eldest son, and separated him from his family; in this case, on the death of the father, the eldest son has no right to get any additional portion of his father's acquisitions from his brothers.

Authorities:

The text of Nārada and Vrihaspati cited in the Dāya-bhāga and Vivāda-chintā-maṇi: "Shares which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them; else they ought to be chastised." "For such as have been separated by their father, with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is lord of all."

Q. 2. If there had been no separation from the father, and the eldest son had left the family on account of a dispute which had taken place between his wife and the other members of the family; in this case, has the eldest son any right to share his father's estate?

R. 2. Supposing the father not to have given any property to his eldest son, or to have made any division of it, and the eldest son to have lived apart, then on the death of the father, all his sons share the inheritance.

Authorities:

The text of Jāgnīvalkya, cited in the Dāya-bhāga: "Let sons divide equally the effects and the debts, after the death of both parents."

Manu:—"After the (death of the) father and the mother, the brethren, being assembled, must divide equally the paternal estate; for they have not power over it while their parents live."
Q. 3. Should the eldest son be entitled to inherit from his father, what portion of the self-acquisitions and of the ancestral property will devolve on him?

Sons share equally.

R. 3. On the death of the father, all the sons will equally divide their father’s property, whether it consist of self-acquisitions or patrimony.

Authorities:—

The text of Manu. See Reply 2.

Q. 4. Supposing the eldest son to have left his father and to have lived apart, and, subsequently to such separation, the father to have lived in a joint state with his other sons, who acquired some property while they were living with their father; in this case, how will such acquisitions be distributed among the sons?

R. 4. The eldest brother has no right to the acquisitions of his brethren, provided they were made without the use of the patrimony, even though they were acquired while the sons were living with their father.

Authorities:—

The text of Vyasa, cited in the Daya-tattwa and other law books: “What a man gains by his own ability without relying on the patrimony, he shall not give up to the co-heirs; nor that which is acquired by learning.”

Q. 5. Subsequently to the eldest son’s departure from the family house, the father, joining his labour to that of his other sons, acquired some property; in this case, will the eldest son share in the acquisition?

R. 5. Whatever property may be ascertained to have been the father’s acquisitions made with the assistance of his other sons, his eldest son is entitled to a share in it, because all the sons have a right to inherit from the father.

Authorities:—

The text of Boudháyana, laid down in the Daya-tattwa: “Male issue of the body being left, the property must go to them.”

Zillah Nuddea, December 3rd, 1811.—Maca. H. L. Vol. II. Chap. 1. case 5 (pp. 5—7.) Gouranga Páruí v. Rám Prasád Páruí.
Q. Three uterine brothers lived in a joint and undivided state. The youngest of them obtained a grant of certain lands in his own name, but his brothers participated equally with him in the enjoyment of the produce. In this case, should all the brothers be considered joint proprietors of the land, or will the person who obtained the grant possess it exclusively? Should all the brothers be dead, the two elder leaving no son, but there being a daughter's son of the eldest, is such grandson in the female line entitled to receive any share of the property, or will the widow of the second brother and son of the person who acquired the grant exclude him, and take the entire state to themselves?

A. Should the youngest brother have acquired the grant in his own name, by means of his own funds and labour exclusively, in this case, he (the youngest brother) is the sole legal proprietor.

If the property have been earned by means of the common funds and labour of all the brethren, though granted in the name of the youngest brother, then the three brothers will be entitled to equal participation. Should all of them be dead, on failure of sons of the two elder brothers, the grandson in the female line of the eldest brother, and the widow of the second and son of the youngest brother will participate in the estate equally, it having been acquired by means of common funds and labour. This opinion is conformable to the law as current in Bengal. Zillah Tipperah, June 29th, 1815. —Macn. H. L. Vol. II. Chap. I. Case 4 (p. 4.)

**Cases**


II. İśhwar-chander Kārfarmaṇ and others versus Gobinda-chander Kārfarmaṇ and others.—S. C. January 1822.—Cons. H. L. Vol. pp, 74, 75, See ante, p. 17.

Jyot-nārāyaṇ-Mallik and others versus Bishwam-bhar Mallik and others.

**Cases**

I. Rādhā-chaṇḍ died intestate, leaving four sons, viz. Hala-dhar, Bishwam-bhar, Go-bardhan, and Jyot-nārāyaṇ.—Gokul-chander was another of Rādhā-
charan’s sons, but died in the lifetime of his father, leaving Gour-priyé his widow, and Rám-dhan and Braja-mohan his sons, surviving him. Hala-dhar survived his father, and died leaving Rám-náráyan his son, and Piyérí his widow.

It appeared that the parties had all lived together in the same house as a joint and undivided family: and the Court having been satisfied as to the law, viz.—that parties so living together are capable of acquiring separate property, and have a right to enjoy property so acquired in severalty, directed issues to try the facts, namely, whether or not the claimants of such separate property had actually acquired it by their own several exertions.

The issues were favorable to the claimants, severally; and the result was a final decree, declaring the infant Rám-náráyan entitled to a house, and Company’s securities to the amount of 27,000 Rupees in severalty,—declaring Bishwam-bhar entitled to three houses and Company’s securities to the amount of 11,700 Rupees in severalty,—ordering the remainder of the landed property to be sold, and decreeing that the purchase money, together with 9,000 Rupees in Company’s securities, should be divided into five parts or shares; of which Bishwam-bhar, Rám-náráyan, Joy-náráyan, and Go-bardhan should each take one share, and Braja-mohan and Rám-dhan should take one between them.*—S. C. Cons. H. L. pp. 48—50.


* It will be observed, that I have given this report of the case, merely for the purpose of showing how far the Supreme Court has gone in adjudicating self-acquired property, to the several members of a Hindu family, in all other respects joint and undivided. It was the property of Rádhá-charan, and the increase of that property, which was ordered to be equally divided among his sons, and their representatives—giving their own acquisitions to the acquirers, i. e. those of Bishwam-bhar to himself, and those of Hala-dhar to his son Rám-náráyan. Here it will be seen that Bishwam-bhar, Go-bardhan, and Joy-náráyan, the surviving sons of Rádhá-charan, each took per capita; that Rám-náráyan, the only son of Hala-dhar, took a share in right of his father; and that Rám-dhan and Braja-mohan, the two sons of Gokul-chander, took per stirpes his share between them. —Sir Francis Macnaghten’s Considerations on the Hindu law, pp. 50,51.
277. The acquirer has two shares of the property acquired by the use of the joint stock.*

This is reasonable; for the acquisition is made on the part of the acquirer both by the use of the common property, and by personal labour; but on the part of the rest, simply, by means of the joint stock.

Authority. "The brethren (u) participate in that property which one of them gains by valour (i) or the like, using some common property (a) either a weapon or a vehicle. To him (o) two shares should be given: but the rest should share alike."—Vyāsa. Dá. bhá. p. III.

(a.) The using of common property must, however, be other than that of eating and clothing; inasmuch as a house-holder must use property for that purpose.—Sri-krishṇa's commentary on the Dáya-bhága. Sans. p. 124,

(i) "Gained by valour"—refers (here) to what is acquired by valour by using the joint-stock; for it will be hereafter declared, that wealth acquired without the use of the joint stock is indivisible.—Dá. kra. sang. p. 73.

Kátyáyana propounds the gain of valour, &c.—"When (a soldier) performs a gallant action, despising danger; and favour is shown to him by his lord pleased with that action; whatever property is then received by him, shall be considered as gained by valour."—Dá. bhá. p. 131.

(u) The term 'brethren'—is merely illustrative, it comprehends also paternal uncles and the rest.—Dá. T. Sans. p. 17.

(o) 'To him.'—that is, to the acquirer.—Dá. kra. sang. p. 70.

Where the exertion of one is merely through the joint property, and the other contributes to the acquisition by his person and wealth, it is a rule suggested by reason, that the one shall have a single share, and the other two. Hence likewise it follows, that—

VYAVASTHA-DARPANA.

278. If the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used.—Dā. bhā. p. 114.

279. Should one member of an undivided family augment the joint stock by his sole exertions, he is not therefore entitled to a double share of the augmentation.

280. Where several coparceners contribute means and labour, or other mutual personal aid* in the acquisition, there they share in proportion to their contribution, if known; otherwise, in equal shares.

281. Where a property is acquired by the use of one parceren’s money and by another parceren’s labour, there they both share it equally; but where it is acquired by one’s money and another’s money and labour, there the parcerens who supplied funds shall have one share, and the other shall have two shares: and in both cases the rest of the parcerens shall be excluded from participation.

282. The brother left to support or protect the family of a brother gone abroad for acquisition, is to have a share of such acquisition.†

Authority. “He, who maintains the family of the brother studying science, shall take, be he ever so ignorant, a share of the property gained by science.”—NĀRADA.

Although this text relate to the share of the property gained by science, yet it may be applied to the present case also, conformably to the maxim that the sense of the law ascertained in one instance,

* The personal aid calculated to entitle a parceren to a share on that account must, however, be equally valuable with the means contributed, or directly instrumental in making the acquisition.

† See Macn. H. L. Preliminary remarks, pp. XIII, XIV.
283. Shares are to be equal where the proportion is not specified.

Because of the rule which directs equality where no (other) proportion is specified.—See Coleb. Dig. Vol. III. p. 61.

Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.

Q. Three Hindus (being uterine brothers) live as a joint and undivided family, and acquire some property real and personal, without relying on the patrimony. The eldest brother separates himself from his brothers, and takes the whole of the property exclusively, without coming to any division with his brethren. It appears that the acquisitions of the eldest exceeded those of his brothers. Under these circumstances, how should the property be distributed?

R. In this case, three brothers living in a joint state, acquired the property real and personal by their own respective funds, without relying on the patrimony, and therefore each brother is entitled to a share corresponding to the extent of his separate funds applied by him towards the acquisition. If one of them had acquired it, relying on ancestral joint stock, the acquirer shall have twice as much as the rest; in other words, a double share. Should any one acquire property by dint of his own funds without using the common stock, the acquirer takes the whole acquisition. The authority for this opinion is the following doctrine of Vyāsa and Jānya-vaikya laid down in the Dōya-bhōga, &c.

"If the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used." "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs; nor that which is acquired by learning." "Whatever else is acquired by the coparcener himself, without detriment to the father’s estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs." "The brethren participate in that wealth, which one
of them gains by valour or the like, using any common property, either a weapon or a vehicle, to him two shares should be given: but the rest share alike."—City Dacca. May 12th 1817.—Macn. H. L. Vol. II. Ch. V. Case 12. (pp. 158, 159.)

Q. A person died, leaving four sons, and some self-acquired landed property. After the father's death, his sons lived together as a joint and undivided family, and they each purchased with their respective acquisitions some lands, which they annexed to the original estate. Under such circumstances, are the four brothers entitled to share the whole property equally, or otherwise?

R. The property acquired by the personal labour and funds of each of the brothers, and annexed to the original estate while they, after the death of their father, were living in a state of union, should there be any means of discriminating how much, either of funds or labour, was contributed by each of the brothers, will be distributed among them, according to their respective contributions. The ancestral property should, however, be distributed among them equally.—Rám-chander Dás versus Ganga-dhar Mahtí. Macn. H. L. Vol. II. Ch. V. Case 14 (p. 160.)

Q. The respondent and appellant, being uterine brothers, lived jointly till the month of September 1210, B. S. The respondent (the elder brother) had acquired money by acting as tásól-dár or collector, iójáé-dár or farmer, and the like capacities; and the appellant also had earned money by acting as a gomáshtak or agent, farmer, and in other employments. They purchased landed property, some in the names of other persons, with their acquisitions, while they were living in a joint state in respect of food. There were no documents to show, with any accuracy, the proportions in which the parties had respectively contributed to the purchase of the lands in question; but it was clearly established, that the proportion contributed by the respondent was much the more considerable. Under these circumstances, will the estate which had been purchased by both the brothers, without the aid of patrimony, but with that of their own acquisitions, be equally divided among them, or is the elder brother, with whose money the greater part of the estates was purchased, entitled to any superior share; if so, to how much?
R. Property acquired by the appellant, living jointly with his brother, without using the paternal estate, becomes his exclusive property; and that purchased by the respondent, earned under the circumstances stated, becomes his own estate. If the property was purchased with a greater share of the respondent's funds, the less sum being contributed by the appellant, while they were living together, each of them is entitled to share the estate, in proportion to the funds respectively contributed by them to the purchase of the property. Whatever property may be ascertained to have been purchased by each of the parties, each is entitled to, and such portion should be considered the exclusive property of each; but where the proportionate contribution of each may not be determined, there is no rule in the law by which the respective shares to which each is entitled, can be ascertained.

Authorities:

Jânyavalkya, cited in the Dáya-bhága and other tracts: "Whatever else is acquired by the coparcener himself without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs." "Shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used." This is laid down in Dáya-bhága, Dáya-rahasya, and other authorities.—Sudder Dewanny adawlut, May 28th, 1811. Kushal Chakra-vartti versus Rádhá-náth Chakra-vartti. Macn. H. L. Vol. II. Ch. V. Case 8 (pp. 153, 154.)

Q. Two brothers possessed an eight-anna share of an ancestral dependent talook, and lived apart, though the estate continued to be held by them in joint tenancy. The Zemindar or proprietor of the dependent talook seized the whole estate for the arrears due from the other eight-anna share. The elder brother died, leaving a daughter's son by one of his wives, and a widow. The second brother next died, leaving two sons. After the death of two brothers, the talook was still in the Zemindar's possession. One of the younger brother's sons, and the proprietors of the other eight-anna share, brought an action against the Zemindar to recover the property in question, while the elder's widow was alive; and afterwards settling the matter by compromise with the Zemindar, were reinstated in the possession of the
property, but the whole eight-anna-share which belonged to both the brothers, was retained exclusively by the younger brother's son, who caused the widow of the elder brother to draw up a deed of gift of her husband's share in their favour. It has been proved, that a few days prior to her executing that document, she was in a state of insanity, and that she died eight or nine days after the execution of the deed of gift. Her exequial rites were performed by one of the younger brother's sons. Previously to her making the gift, her husband's grandson in the female line made objections thereto, and presented a petition to the ruling power, setting forth his objections. On the death of the elder brother's widow, his grandson claims his share of the dependent talook. In this case, is the grandson entitled to any share; if so, to what portion? Was the widow competent to give away her husband's entire share to his brother's son, or not?

One fourth over and above his own share of a recovered family estate, goes on partition to him who recovered it. R. Of the eight-anna share of the dependent talook, in this case, one moiety belonged to the elder, and the other half to the younger brother; and the Zer-mindar, it appears, seized their shares, together with the other eight-anna share, for the rent due from the latter, and the younger brother's son recovered the property. Under these circumstances, a one-anna share, out of the four-anna share which appertained to the elder brother will go, on partition of the estate, to the recoverer, over and above his own share, and the remaining three-anna share to the grandson. The gift which was made by the widow of the elder brother to her husband's younger brother's son, has no validity. This is conformable to the Dāya-bhāga and other authorities. City Dacca. June 25th, 1811.—Macn. H. L. Vol. II. Ch. V., Case 11 (pp. 157, 158.)

Q. Of two brothers, who lived together as a joint and undivided family, the elder died, leaving four sons, and the younger brother and his son still living. On the death of the elder brother, his four sons and the surviving brother and his son separated in respect of food, but the property continued in joint tenancy. Certain landed property was purchased with the proceeds of the joint estate, as well as with money, which was jointly borrowed, by means of the personal exertions of the parties, in the name of the surviving brother's son. The debt so contracted was liquidated by the proceeds of the joint
property, and the management of the estate newly purchased was wholly confined to the surviving brother's son. In this case, to what proportions of the property is each of the above individuals entitled?

R. Supposing one of the two undivided brothers to have died, leaving four sons, and the other brother to be living, with a son, and the family to have subsequently separated in respect of food only, and after the elder brother's death, their property to have been undivided, and landed property to have been acquired by means of their joint funds and labour, in the name of the surviving brother's son, and that son to have managed the estate; in this case, the property will be made into two shares, of which one will go to the four sons of the deceased brother in right of their father, and the remaining one to the surviving brother. The portion which will go to the four sons of the deceased brother will be equally shared by them. This opinion is consonant to the Dáya-bhága, Dáya-tattva, and other authorities.* Calcutta Court of Appeal, June 13th, 1814. Macn. H. L. Vol. II., Ch. V., Case 17 (pp. 162, 168.)

Case bearing on the vyavasthá No. 277.


Cases bearing on the vyavasthás Nos. 278, 280.

I. The appellant and Nanda-kishor Nándá (who had since been appointed guardian to the minor Rám-chánd) being dissatisfied with the decree passed by the provincial Court of Moorshedabad, appealed from it to the Court of Sudder Dewanny Adawlut. Shortly after the admission of the appeal, the minor (Rám-chánd) deceasing, Musst. Droupádi was allowed to conduct the appeal, as his next heir and representative. The fourth and officiating Judges (S. T. God and W. Dorin) before whom the appeal was heard, made the following comments on the evidence

---

* But it must be understood in this case, that the sons of the deceased brother did not individually contribute any thing to the acquisition. The right they derived was from their father, and in virtue of his contribution.
It has been established both by oral and documentary evidence that the estate of which the respondents claim one moiety was acquired by Bhagat-rám by his own exclusive industry and his exclusive funds. The Mehals of Handial, Joyáson, and Chhattár-ere were acquired at a time when all the four brothers (sons of Rám) were living together as a joint and undivided family, and were living with joint stock. This was about the year 1207 or 1208 and at that time they were all in possession of lands as copar.

In like manner, the three other Mehals of Chander-hátí, m-gáon, and Koibakal, were purchased between the years 1211 and 1219 by means of the joint funds of the copartners. Such parts of the estate as had been purchased at publick auction were afterwards sold by the nominal to the real purchasers. That the lands purchased with the joint funds is clear from the evidence of the sons of both parties, as well as from the documentary evidence:ally from the will of Bhagat-rám, in which there is a distinct mention of Anandi-rám’s right of participation, as well as from some of the same individual in a former suit, in which the same son is unequivocally made. It also appears that Rám-kumár, the eldest son (of Rám-gopál), died childless, leaving a widow, in the year 1208 B. S., after the purchase of the Mehals Hándial, Joyáson, Chhattár-áb; that in the same year Rádhá-mohan, the fourth son died childless, leaving a widow; and lastly, that Anandi-died in the same year, leaving three sons, (the respondents,) and the husband of the appellant. In the year Bhagat-rám died, leaving his widow and an adopted son, Rám-he, at the period of his death, living with his nephews (the debtors) as a joint and undivided family. The adopted son has died. There surviving, of Rám-gopál’s family, the three sons of Rám-rám, who are the respondents, the widow of Bhagat-rám, the appellant, and the widows of Rám-kumár and Rádhá-mohan, ages deemed it advisable to consult the pandits as to the mode in which the estate should be distributed among these survivors. The pandits were accordingly desired to expound the law on this point, according to the doctrine current in Bengal. The pandits replied that the proper mode of distributing an estate acquired int and undivided family, was to ascertain the quantity of funds supplied by each individual member of the family, and to
apportion the shares accordingly; but that where this fact was not to be ascertained, the rule is, that the property should be equally divided among the coparceners; according to which rule, the three sons of Ānandi-rām, the widow of Bhagat-rām, and the widows of Rām-kumār and Rādhā-mohan, were entitled to the portions of those whom they represented respectively. After perusing the above opinion, the Judges, on the 20th of February 1821, recorded their Judgment, that as it was impossible to ascertain with any degree of accuracy the quantum of labour and funds supplied by each of the brothers, it was equitable to distribute the property agreeably to the rule laid down by the pāṇḍits among the survivors. A final decree was accordingly passed amending that of the court below, and awarding one share of the estate to the appellant, as widow of Bhagat-rām, one share to the respondents as sons of Ānandi-rām, and one share each to the widows Rām-kumār and Rādhā-mohan. Both parties were ordered to account to the widows of Rām-kumār and Rādhā-mohan for the mesne profits of their shares during the period of their dispossession, and the appellant was ordered in like manner to account to the respondents for the mesne profits of their shares.—20th February 1821. S. D. A. R. Vol. III., pp. 74—77.

Kripā-sindhu Pāljushī and others versus Kāndiyā Achārjīya and others.

II. In this case the Sudder Court, without reference to its pāṇḍit, adjudged that where property was acquired by several joint brothers, who contributed unequally the means and labour, in the acquisition, the brother who contributed most to the acquisition should by usage and Hindu law receive a larger share.—1st December, 1833. S. D. A. R. Vol. V., p. 335.

Kushal Chakra-barttī, Appellant, (Plaintiff,) versus Rādhā-nāth Chakra-barttī, Respondent, (Defendant.)

III. From the evidence of the witnesses, and documents, it appeared that the father of the parties had not left any property at his death; that the plaintiff and defendant had continued to live jointly from that time till the year 1210, and had held the lands in dispute, which had been purchased, some in the name of the plaintiff, some in that of the defendant, and some in that of other persons as common
parceners; that they had both earned money by acting as gomasthás, and in other service, and had, in common, rented sundry lands, in the interval between their father's death and the purchase of the lands in dispute. From the tenor of the letters which had passed between the parties, during that time, it further appeared that they had acted together on terms of partnership. There were no documents to show, with any accuracy, the proportion in which the parties had contributed to the purchase of the lands in question; but it was clearly established that the proportion of the defendant was much the most considerable. His professional employments were stated to have been greatly the most lucrative. The plaintiff, on the other hand, had been chiefly engaged in the management of the joint lands, and in other employments, procured through his brother's means, or subordinate to him.

On a special appeal to the Sudder Dewanny Adawlut by Kushal Chakro-berit, the pândit of the Court delivered a Vyavasthá, reciting that, "of lands purchased by two brothers, living together in common without any paternal fortune, from their joint earnings, (Sádhá-rasopórijan,) each was entitled to share in proportion to what he had contributed without regard to seniority; and that where the proportionate contribution of each was not determined, there was no rule in the Hindu law by which the respective shares, to which each was entitled, could be settled."

On inquiry by the Court, the pândits further stated that, if it should appear that the disputed lands were acquired partly by the capital of the Respondent, and partly by the labour of the Appellant, in that case each would be entitled to a half share; or that if they were acquired with the joint labour and capital of the respondent, and of the labour only of the appellant, in this case the Respondent was entitled to 2—3rds, and the Appellant to 1—3rd of the land.

Upon the above opinions of the law officer, and on an equitable consideration of all the circumstances of the case, especially the presumption arising from the evidence, that the respondent had contributed chiefly the money by which the lands were purchased, but that the appellant gave his time and labour to the improvement of them for the joint benefit of his brother and himself, the Court (present,
Harington and Fombelle) passed a final decree, amending the decrees of the Zillah and Provincial Courts, and adjudging to the appellant a third portion of the lands, with a proportionate share of the mesne profits from the date of his being ousted to the period of the execution of the decree.—11th June, 1811. S. D. A. R. Vol. I., pp. 385—387.

**Guru-charan Dás and others versus Gokul-maṇi Dásī.**

**Case bearing on the vyavastha No. 277, 279.**

In this case, it was held that the sole manager of the joint stock of a joint Hindu family, supposing that joint stock to be augmented by his sole exertions, is not entitled to a double share of the amount of the augmentation for his trouble. The acquisition of a distinct property by a member of a joint Hindu family without the aid of the joint funds or of joint labours gives a separate right, and creates a separate estate. The acquisition of a distinct property with the aid of joint funds and joint labours gives the acquirer a double share thereof. The union with the joint fund of that which might otherwise have been held in severalty, gives it the character of a joint and not separate property.—S. C. Fulton’s Reports, Vol. I., pp. 165, 166.

**Case no. 221 of 1855.**

**Krishna-mohan Neoghi and others, Appellants, versus Bhuban-mohan Neoghi and others, Respondents.**

**Case bearing on the vyavasthā Noa. 279, 280.**

This suit was brought by three out of five brothers to acquire possession of a three-fifth share of certain estates held at the date of action by one brother. Upon a review of the evidence, it was held to be proved that the estates in question had been purchased out of a common fund by and in behalf of the five brothers in equal shares; and in reversal of the decree of the lower Court judgment was given for plaintiffs, appellants. S. D. A. D. 10th of November, 1858.

**BY WHOM PARTITION CAN BE ENFORCED.**

VYAVASTHA. 284. Partition is to take place not only when all the parceners choose, but even at the instance of any one* of them.

---

* This is illustrated by Sir Francis Macnaghten as follows: —

1. Any one of the parties possessing or inheriting a joint estate, may enforce a par-
REASON & AUTHORITY. Since any one parceller is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatory in the text:—“After the (natural or civil) death of the father and mother, the brethren, being assembled, &c.” Else, since assemblage implies many, there could be no distribution between two: for no passage of law expressly provides a division between two co-heirs.—Dá. bhá. p. 16.

VYAVASTHA. 285. The mother or grandmother however cannot enforce a partition.

But her right to a share will accrue on a division being made by the agency of her sons or grandsons, or any one of them, or by the heir of any of them (since deceased) as the case may be.*

Srimati Joy-mani Dasí and Dási Dasí versus Átmá-ráma Ghose and Kálchánd Ghose.

Case bearing on the vyavastha No. 286, 295 & 296.

In this case, partition was ordered upon the prayer of a widow who succeeded by her husband’s death to his share of an undivided estate.—S. C. 10th December, 1823.—Cons. H. L. pp. 64—66.

II. If out of ten brothers of an undivided family, one shall die, leaving three or more childless widows or any number of widows having daughters only, and shall not leave a son, the widows will of course succeed to their husbands’ estates; any one of these may then, against the will of her co-widows, separate herself from the nine surviving brothers of her deceased husband.—Ibid. p. 46.

III. Partition may be enforced as well of the immovable as of the movable property, whether it be ancestral or jointly acquired.—Ibid. p. 46.

* If the father of A, B, and C be dead, leaving their mother D surviving—if A, B and C, shall then severally marry and die, each leaving a widow and sons, surviving; upon a partition between the sons of A, the sons of B, and the sons of C, the mother of A, B, and C, (i.e. D,) shall take a grandson’s share. But the widows of A, B, C, will not be entitled to any share, unless their sons shall come to a partition among themselves. If the sons of A shall divide, then their mother (the widow of A) shall take a share
THE MOTHER ENTITLED TO A SHARE.

Vyavastha. 286. If, however, partition be made during the life-time of the mother, then she will get a share equal to that of her (each) son.*

Authority. I. The mother on the death of her husband takes a share equal to that of (each of) her sons.*—Rashtriya Harspati.

II. The mother also, on the demise of the father, takes a share equal to her son’s—Kātāyana.

Here since the term mother relates to natural parent, the stepmother does not participate, but she must be maintained with food and raiment.*

Vyavastha. 287. The equal participation of the mother with the brethren takes effect, if no separate property have been given her by her husband and the rest: but if any have been given, she has half (a share.)

equal to that of one of her sons. In like manner the widow of B, will be entitled, if her sons shall divide;—but if the sons of C shall continue undivided, their mother will not be entitled to any share.—Cons. H. L. pp. 53,54.


Sir William Macnaghten (in his book on the Hindu Law, Vol. I. page 50) treats of the right of the mother in partition; but what he has written is insufficient and inaccurate as will be found by reference to the Vyavastha’s and authorities herein contained.

The mother has a contingent right which may be enforced by her upon a partition of her husband’s estate being made. Her original right is to maintenance only—which is to be suitable to the wealth of which her husband died possessed; but it is by the act of others that she becomes entitled to any specific share. The reason given for this is modern but satisfactory. She has a right to participate in all the comforts which are enjoyed by her family in its undivided state, and a legal as well as natural claim to that protection which may be derived from a union of her descendants. If therefore she is deprived of such advantages, it is not just that she should be enabled to take care of herself, and not be obliged to go from door to door for her support. The doctrine is rational, and I have not been able to discover that it is anywhere contested.—Sir Francis Macnaghten’s Considerations on the Hindu Law, p. 57.

It will have been seen that in cases of partition, the mother’s right depends upon the parties by whom the division may be made; that it must be made by her own descendants; and that the childless widow, or the widow who had borne daughters only, will not be entitled to participate in the event of her husband’s descendants coming to a partition of his estate.—Ibid. p. 57.
Authority. According to the texts already cited.—See ante, p. 425.

According to Jímáta-váhana, Raghu-nandana, Sri-krishña Tarkálan-kára, and the rest, when partition is made by a father, a share equal to that of a son’s must be given to the wife who has no son, not to her who has male issue; her son should be considered as alone entitled to (share in) the partition: this agrees with common sense. But, when partition is made by sons, no share need be allotted to the step-mother, who has no male issue, but food and raiment (must be assigned;) for the late owner of the property was bound to support her.*

Vyavastha. 288. If the sons refuse to deliver the share of their natural mother, she may exact it even by forcible means.†

Reason. For the ordinance would be otherwise nugatory.

Vyavastha. 289. When the father of an only son leaves one wife, then food and vesture only shall of course be allotted to her.‡

Reason. Since no text propounds the immediate appropriation of a share; and the law has only ordained the allotment of a share to the mother or step-mother when partition is made among sons.

Example. If a man leave two wives, and by one two sons and by the other four, partition shall be made as above mentioned, among the brothers of the whole blood and half blood; but what shares shall be allotted to their respective mothers? To this Chándeshwara and the rest would reply, the estate must be divided into eight shares, and two must be given to the mothers, for they are equally wives, of the father; and the six brothers take six shares. However, Sri-krishña Tarkálan-kára observes in his commentary on the Dáya-bhága, ‘both are not entitled to shares, since both are not natural mothers of all the sons; and the natural mother, according to Jímáta-váhana and the rest, is alone entitled to a share.’‡ Hence—

290. If the uterine brothers separate from their half brothers, their respective mothers will not be entitled to shares.

291. But when one set of uterine brothers shall come to a partition among themselves, then their mother will be entitled to a share equal to that of one of her sons: otherwise not.∗

292. At the time of partition with half brothers, if the uterine brothers also separate from each other, or any of them from the rest, taking their shares or his share in severalty, in that case the mother of these is entitled to an equal share out of her own sons' shares.

Inasmuch as at the same time partition takes place amongst her own sons themselves.

293. If any of the sons or the heir of a son (deceased) be separated from the rest, then also the mother shall be entitled to a share equal to (that of one of) her sons.†

∗ If A shall have three widows, one the mother of B, C, and D; one the mother of E, F, and G; and one the mother of H, I, and K; upon a separation of these three sets of uterine brothers from each other, they will form three joint and undivided families, and their respective mothers will not be entitled to a separate share, but if one set shall come to a partition among themselves, then their mother will be entitled in severalty to a fourth part of their estate. If another set (E, F, & G for instance,) shall all die without having come to a partition; E leaving sons, F leaving grandsons, and G leaving great grandsons, then the sons of E, the grandsons of F, and the great grandsons of G, will form a joint and undivided family, and the mother of E, F, and G will not be entitled to any separate share.—Cons. H. L. p. 42.

† If there be three widows, one the mother of three, one the mother of four, and one the mother of five sons; the rule as to partition will be the same as it is when they are mothers each of an equal number of sons; that is, if the uterine brothers separate from their half-brothers, and continue united among themselves, their respective mothers will not be entitled to any several share; but if they come to a partition among themselves, then the mother of the three sons will be entitled to a fourth—the mother of the four sons to a fifth, or the mother of the five sons to a sixth part in severalty.—Ibid. p. 43.
294. Like a brother the mother also is entitled to a share of the property acquired by the use of the patrimonial wealth.*

295. If the mother happen to be the heiress of a son deceased, she shall, as such, inherit his share, and also on partition she shall, as mother, get another share equal to that of one of her sons.†

296. The mother is entitled to a share equal to that of a son, not only on partition between her sons themselves, but also between her son and the heir of a son deceased.‡

* The mother shall not be entitled to share in the property acquired by the individual exertions of one of her sons, nor in the property acquired by the joint exertion of them all, unless it shall appear that such acquisitions were made out of the patrimonial wealth, in which case she shall be entitled to share in the increase of the patrimonial wealth, upon partition.—Cons. H. L. p. 51.

† See the following note.

‡ In the case of *Gouru-prasad Bose versus Shib-chander Bose &c.* the court made further enquiry, and obtained the best information;—we were ultimately satisfied that, upon a partition by her son and grandsons, Khanjani was entitled to share, as she would have been had the partition been made by her sons.—Cons. H. L. p. 29.

If A shall have three sons B, C, and D, by one wife, and if A shall die, leaving his sons B & C, and his grandsons E, F, and G, by his son D, and his widow, the mother of B, C, & D, surviving, then upon partition made between B, C, E, F, and G, the mother of B, C and D (i.e. the widow of A) shall take one-fourth of his (A's) estate, or as much as E, F, and G (sons of D) shall take among them jointly. The same rule will hold, if two of her sons had died, and if partition had been made between her living son and the sons of her two deceased sons;—as, if C & D had died, she will in this case also take one-fourth of A's estate—she shall take one share—her living son B shall take one share—the sons of C shall take one share among them,—and the sons of D shall take a share among them.—Cons. H. L. p. 52.

It is well established that she is entitled to a share, if her sons, her grandsons, or her sons and grandsons should divide the estate.—As there is nothing to exclude her in the case of a more remote descendant being a party to the partition; it is, I think both reasonable and just that she should have her share, although such a person should chance to be one of the partitioners.—Cons. H. L. p. 30.

If A shall die leaving a widow, the mother of B, C, and D, and these three sons surviving him; if B then shall die leaving three sons E, F & G,—and C die leaving four sons H, I, K, and L,—and L die leaving two sons M and N, and a partition then take place between the several parties, i.e., D the surviving son of A; E, F, and G, the sons of B
294. If one of the brothers or the heir of a deceased brother shall take his share of either of the movable or immovable property, this will give the mother a right to her separate share of the same description of property.

295. The mother who gets a share upon partition gets it for life only: with respect to dominion over such property, she stands upon the same footing with the widow who succeeds to her husband’s rights.

We have seen that on a primary partition in the last mentioned case, the widow of A will be entitled to a fourth part of his estate; that his surviving son D will be entitled to a fourth part; that the sons of B will be entitled to a fourth part; and that the descendants of C will be entitled to a fourth part. Now let us suppose the widows of B, C, and L, to be living when their sons respectively come to a partition among themselves; then the proportion of E, F, and G shall be divided into four parts, of which the widow of B will take one, and E, F, and G one each. The proportion of H, I, and K shall be divided into four parts, of which the widow of C will take one, and H, I, and K one each. The proportion of M and N shall be divided into three parts, of which the widow of L will take one, and M and N one each. But upon the primary partition, A’s will be the only widow entitled to a share. The claims of the other widows will not arise, until partition be made among their own sons.

* If brothers of an undivided family, shall possess immovable as well as movable property, and if one brother shall take his share of the movable property to his own separate use, continuing to possess the immovable property joint and undivided, with his brothers; this will give the mother a right to her separate share of the movable, but not of the immovable property.

† SeeVyavastha’s Nos. 24—51, and Commentaries and cases &c. in illustration thereof.—Ante, pp. 46—119.

I believe it may now be laid down as the law, that mothers who take a share upon partition, take an estate for life only, and with respect to dominion over the property, stand upon the same footing with widows who succeed to their husbands’ right. It has been said that what is taken by a mother upon partition, is more in the nature of a gift than that which is taken by widow on the death of her husband. If all the sons agreed to divide, it might indeed be said to be in the nature of a gift, because they would all have con-
Iśhwār-chand Kārīma and another versus Gobinda-chand Kārīma and others.

In this case, it was declared by the decree, that the will of the testator Gokul-chand Kārīma was wholly inoperative, except as to a disposition therein contained, in favour of Gour-maṣi Dāsi, the step-mother of the testator. It was then declared that the defendants Gobinda-chand, Nirmal-chand, Kānai-chand, the sons of Gokul-chand by the defendant Rās-maṣi, his first wife, together with the defendants Doyāl-chand and Sharat-chand, (Sharat-chand being then dead) two sons of Gokul-chand by the defendant Rādhi-maṣi, his second wife, together also with the complainants Iśhwār-chand and Sharat, (Sharat being then dead,) two sons of Gokul-chand by the complainant Nārāyanī, his third wife, as the seven sons who survived Gokul-chand, became entitled to his real and personal estate, of which he was seized or possessed at the time of his death; and that the said seven sons were so entitled in equal parts or shares.

The decree then declares, that the defendant Rām-maṣi, widow and heir of Sharat-chand, is entitled absolutely to his share of the personal estate,* and to his share of the real estate for her life: that the complainant Nārāyanī, as the mother and heir of Sharat, is in the same manner entitled to his share: that Rās-maṣi, mother of Gobinda-chand, Nirmal-chand, and Kānai-chand, is entitled absolutely to one fourth of their three seven parts of the personal estate—and for her life to one fourth of their three seven parts of the real estate;*—and

*surred in the act by which their mother became entitled to a share of the estate—yet if there be ten sons, any one of them may enforce partition; and although the other nine continue living in an undivided state, and although the tenth separated himself from them against their will, his separation alone will give the mother a right in severalty to one eleventh part of the estate. In such a case, what she takes can hardly be said to be in the nature of a gift—certainly it is not a gift from her sons; nine of them out of ten being desirous of with-holding from her, that which one enables her to take by compulsion from the rest;—but whatever the reason may be, the law is conclusive upon the subject. She has a right on partition being made, although the greater number of her sons may have been unwilling to divide. The Supreme Court has not hitherto made any distinction between the interest taken by a mother upon partition, and that taken by a widow upon the death of her husband.—Cons. H. L. pp. 43, 44.

* The extent of the right of a woman, so succeeding, in the personal estate is the same as that in the real estate, the Hindu law making no difference between the two sorts of property.—See Anic. p. 101.
that Rádhá-māṇi, the mother of Doyāl-chánd and Sharat-chánd, is in the same manner entitled to one third of their two seven parts of the estate.

It will be observed that Rās-māṇi, the mother of three, and Rádhá-māṇi, the mother of two, sons of Gokul-chander, came in upon partition made, the first by her three sons, the second by one son, and the widow of her deceased son; and also that Rām-māṇi, the widow of Sharat-chánd, and Nrāyāṇī, the mother of Sharat, came in as heirs, one of her husband, and the other of her son; and that the mothers and widows so taking were all declared to have the same interest in the estates which they severally took, i. e. an absolute interest in the personal, and an estate for life in the real property.—Cons. H. L. pp. 74, 75.

* That part of the decree which declared the rights of the mothers, proceeded, of course, upon the partition made by their sons. Rádhá-māṇi was the mother of Doyāl-chánd and Sharat-chánd. Sharat-chánd had died, and his widow Rām-māṇi was declared entitled to his share—and then, on a partition between Doyāl-chánd and Rām-māṇi Rādhá-māṇi, the mother of Doyāl-chánd and Sharat-chánd was entitled to a share.

So far this decree is consistent with all the decisions; but there is one point in which it differs from the decree that was pronounced in December, 1823, in the cause of Srimati Joy-māṇi Dāsi and others versus Attā-rām Ghose and others, in which Karmāṣṭ-māṇi Dāsi was declared entitled, as heir to her grandson, to his share—and also as parent, to a share upon partition; although as heir of her grandson, she had been joint owner of the property divided. In the present case, the double claim of Nrāyāṇī Dāsi may have been overlooked. Nrāyāṇī was mother of Ishwar-chander and Sharat. Sharat had died, and Nrāyāṇī was declared, as his heir, to be entitled to his share. Thus then, if the decree of December, 1823, was right, Nrāyāṇī was entitled to more than she received. According to the law as it was declared in the case of Joy-māṇi and others versus Attā-rām and others, Nrāyāṇī ought to have taken the share of Sharat, as his heir; and she ought then upon partition to have shared as the mother of Ishwar-chander and Sharat. In the case of Joy-māṇi versus Attā-rām, the pandits were clearly of opinion that Karmāṣṭ-māṇi was entitled to take as heir of her grandson, and when in that capacity she came to a partition with her son and a son’s widow, she was entitled as parent to one fourth of the estate; she and the son, and the deceased son’s widow each took one third; and upon partition she took one fourth of the whole. The correctness of the opinions which the pandits gave on this occasion, seemed to have been admitted; and from subsequent inquiry, I am satisfied that they were consistent with law; according to that principle Nrāyāṇī ought to have had eight shares out of twelve. First, upon partition, she ought to have had six parts, or one half; then as mother she was entitled to one third, or four parts of the whole, her own contributing to make up the four. This would have taken two parts from Ishwar-chander, which would have increased her own six to eight and left him four.—Sir Francis Macnaghten's considerations. pp. 76, 77.
Joy-maní Dási and Dási Dási versus Áttá-ráms Ghose and Kálá-chánd Ghose.

**Case**

Krishna-mohan Ghose died leaving two widows, viz. Karuná-moyí Dási and Lakhyí-priyá Dási. By Karuná-moyí Krishna-mohan left three sons, viz. Gangá-charan Ghose, Badan-chánd Ghose, and Kálá-chánd Ghose; and by Lakhyí-priyá he left Áttá-ráms Ghose. Gangá-charan had married two wives, first Joyá-Dási, who died leaving a son Shambhu-chander Ghose. The other wife of Gangá-charan is the complainant Joy-maní Dási. She had a daughter, who is since dead. Badan-chánd Ghose left one widow, the complainant Dási Dási, by whom he had one daughter only. Kálá-chánd the other son of Krishna-mohan by Karuná-moyí, and Áttá-ráms, the only son of Krishna-mohan by Lakhyí-priyá, are the two defendants.

An account and partition of the estate of Krishna-mohan was in the first place ordered as between the other claimants under Krishna-mohan, and (him) Áttá-ráms, he being declared entitled to one fourth part or share thereof as one of the four sons of Krishna-mohan. Áttá-ráms, then, being solely entitled to a fourth separate part of the estate of Krishna-mohan, it was understood and admitted, that his mother Lakhyí-priyá was not entitled to any separate property upon a partition made between her only son and his three half brothers, and that she was to look to him for her maintenance.

If Shambhu-chander, the son of Gangá-charan and Joyá Dási, had died in the life-time of his father, it seemed to be agreed, (Joyá Dási having died before her husband,) that Joy-maní, the surviving wife of Gangá-charan, would have been entitled to his estate; but Shambhu-chander having survived his father, it was held that his father’s estate vested in him, and that Joy-maní (not being his mother although the wife of his father) could not take from him, (Shambhu-chander,) but that his father’s mother (Karuná-moyí) was his heir. It was also declared that Dási Dási, the widow of Badan-chánd, (he not having left a son,) succeeded as his heir, and was in his right entitled to one fourth part of Krishna-mohan’s estate. It was therefore ordered that the estate of Krishna-mohan be divided into four equal parts or shares, and that Áttá-ráms, the only son of Krishna-mohan by Lakhyí-priyá do take one of the said four parts or shares in severalty. Of the other
three parts it was ordered that Karuna-moyi do take one as the heir of her grandson Shambhu-chander, that Dasi Dasi do take one as the heir of her husband Badan-chand—and that Kali-chand do take one as the survivor of Krishna-mohan’s sons.

This partition having been made, it was farther declared that Karuna-moyi was entitled to a fourth part of the three parts which had been so divided, the third part which she had taken upon partition contributing to make up the said fourth part. It then stood thus,—Karuna-moyi the representative of Shambhu-chander, Dasi Dasi the representative of Badan-chand, and Kali-chand the surviving son of Krishna-mohan, having come to a partition—Karuna-moyi, as mother of Shambhu-chander’s father, as mother of Dasi Dasi’s husband, and as mother of Kali-chand, became, upon a partition, entitled to a share equal to that of the several partitioners. The three parts were therefore again to be consolidated and then divided into four, of which Karuna-moyi as mother was to have one,—the same Karuna-moyi as representing her grandson, one,—Dasi Dasi as representing her husband, one,—and Kali-chand in his own right, one.

As to Joymani, she has a right to maintenance out of her husband’s estate, and may follow it for the purpose of obtaining her right into the hands of Karuna-moyi.—S. C. Cons. H. L. pp. 64—68.

Guru-prasad Bose versus Shib-chander Bose and others.

Case

In this case, the right of a woman to come in for a share upon partition made by her son and grandsons was questioned. The case, so far as it relates to the present point, was shortly this. Krishna-ram Bose died leaving two sons, viz. Guru-prasad, the complainant, and Madan-gopal, who before the filing of this bill had died, leaving six sons.—Krishna-ram left a widow, named Khanjani Dasi, who was the mother of Guru-prasad and Madan-gopal.—Upon a partition prayed as between Guru-prasad, and the sons of Madan-gopal, (that is, between Khanjani’s son and grandsons,) the question arose. It was admitted by all the pandits, that she would have been entitled to one third of Krishnaram’s (her husband’s) estate, if the partition had been made by her sons Guru-prasad and Madan-gopal. As to the point at issue, some Pandits declared, the partition having been postponed until after the
death of Madan-gopāl, that Khanjāni was not entitled to any share. Others declared that her right was the same, partition having been made between her son and grandsons, as it would have been had the partition been made, in the life-time of Madan-gopāl, between her two sons. The Court made further inquiry, and obtained the best information:—we were ultimately satisfied that, upon a partition by her son and grandsons, Khanjāni was entitled to share, as she would have been, had the partition been made by her sons.*—S. C. Cons. H. L. p. 29.


Shib-chander Bose versus Guru-prasād Bose & others.

Case bearing on the vyavasthā N. 384, 392 & 395.

Krīshṇa-rām Bose (now dead) had been the father of Madan-gopāl Bose and of the defendant Guru-prasād. Madan-gopāl died shortly after his father, leaving six sons, viz. Shib-chander, the complainant, and Bhoirachander, Gopi-nāth, Brindā-ban, Nīl-mādhab, and Nābin-chander, five of the defendants. Shashi-mukhi Dāsi one of the wives of Madan-gopāl was dead, and she left an only son, Shib-chander the complainant. Two widows of Madan-gopāl were living,—they were, Mādhabī who was childless, and Añanda-moyi who was mother of Bhoirachander, Gopi-nāth, Brindā-ban, Nīl-mādhab, and Nābin-chander.

* Since that time. I have had several conferences with the Supreme Court pandits on the subject of a woman’s right to a share, if one of the partitioning parties should be a great-grandson. They have invariably said that the law is silent; but that from reason and analogy, she ought to have a share, and if such a question arose, they supposed it would be decided that she should have one. Yet it would seem to entitle her to a share, that there must be some more proximate descendant than a great-grandson, party to the partition—for if the partitioning parties be all so remote as great-grandsons, it does not appear that her claim can, in any manner, be supported. The Pandits are of opinion, if one of her sons be a party, that she ought to have a son’s share—and if her sons are all dead, and one of her grandsons be a party, that she ought to have a grandson’s share. This is conformable to the principle of partition,—for in a division between her son and grandsons she will undoubtedly be entitled to the share of a son.

It is well established that she is entitled to a share, if her sons, or grandsons, or her sons and grandsons should divide the estate. And as there is nothing to exclude her in case of a more remote descendant being a party to the partition, it is, I think, both reasonable and just that she would have her share, although such a person should chance to be one of the partitioners.—Sir Francis Macnaghten’s Considerations on the Hindu Law, p. 30.
five of the defendants. These two widows were defendants to the
suit,—and the other party was the defendant Khanjani, who was the
widow of Krishṇa-rām, and mother of his two sons Madan-gopāl and
Guru-prasād.

On the 7th of August, 1813, the Court pronounced a decree declar-
ing Khanjani, the widow of Krishṇa-rām, entitled to one third part
of the estate, the movable absolutely, and the immovable for her life;
the defendant Guru-prasād was declared entitled to one third part to
his own several and separate use;—the other third part was declared
to belong to the representatives of Madan-gopāl;—and as to it, the
Master was ordered to inquire and report what would be an adequate
sum to set apart for the purpose of securing to Mādhabi, the child-
less widow, a suitable allowance for her life. It was then declared
that Shib-chander was entitled in severalty to one sixth of the last
mentioned third part,—and that the remaining five-sixths be divided
into six parts, of which Bhoirab-chander, Gopī-nāth, Brindā-ban, Nīl-
mādhab, and Nabīn-chander, should each take one, and their mother
Ananda-moyi, one,—the immovable part of which she was to take for
life only, and the movable absolutely. Subsequently on a bill having
been filed in the nature of a bill of review, the Court, as it had done
in the case of Kāshi-nāth Basāk and Ramā-nāth Basāk against Haras-
sundārī Dāsi, varied the decree made on the 7th of August, 1813, and
instead of declaring that Khanjani Dāsi was entitled to the movable
property absolutely, and to the immovable property for her life, declared
her entitled to one third of the estate, real and personal, according to

* Upon this occasion the Court pañīlīs were consulted, and they expressly declared
that the mother who took upon partition, and the widow who succeeded to the husband's
property, stood upon the same footing with regard to their interests in the estates. There
is not in fact any distinction as far as the right extends, nor do I believe that any ground
of distinction can be found in the Hindu Law.

The Supreme Court has always considered the mother who takes upon partition, and
the widow who succeeds to the estate of her husband, as possessed of equal interests. And
it is to be lamented, when two opportunities occurred, that the Court did not insert, in its
decrees, the decided opinion which it entertained upon the subject; that it did not declare
the widow and the mother entitled to an estate for life only, whether the property of which
they came into possession was movable or immovable.

That the Court thought the decrees, which declared such parties entitled to an ab-
solute estate in movable property, ought to be altered, is certain. The opinions of the
VYAVASTHA-DARPANA.

Cases

In the case of Kāshi-nāth Basāk and Ramā-nāth Basāk versus Hara-sundari Dāsī, and in that of Guru-prasād Bose versus Shib-chander Bose and others, the (Supreme) Court was called upon to consider whether or not, the widow and the mother had a right to an absolute estate in the movable property. In each case, the decree by which such a right had been declared, was amended, and the declaration was expunged. The opinions delivered by the Judges were unequivocal, and it was well understood by the profession, that no more than an estate for life in movable property could be taken by a widow in right of her husband, or by a mother upon partition made among her sons.*—Cons. H. L. pp. 44, 45.

THE PATERNAL GRANDMOTHER TAKES A SHARE.

296. When the paternal grandfather’s estate is divided by grandsons, the grandmother takes a share equal to that of a grandson.†

Authority. Even childless wives of the father are pronounced equal shares; so are all the grandmothers: they are declared equal to mothers.—Vyāsa.

By the expression ‘equal to mothers’ it is shown that as the mother is entitled to an equal share in the partition of her husband’s property, Judges were known and even declared; and as we have not any authority in the books of Hindu law, by which a distinction between movable and immovable property in the possession of a mother or a widow can be justified, it will, I trust, be thought proper to abide by the rule which may be said to have been laid down, and to hold in future that neither widow succeeding to her husband, nor mother sharing upon partition, shall be entitled to more than a life interest in movable property. The power of expenditure may be especially given in particular cases.—Sir Francis Macnaghten’s Considerations on the Hindu Law. pp. 73, 74.

* Such is also the case with immovable property—the Hindu law making no distinction between the movable and immovable parts of an estate inherited by a woman or received by her on partition.—See ante, p. 101.

ty made by her own sons, so in the partition of the grandfather's property made by the grandsons, the grandmother has an equal share with them.

Remarks. I. In this instance likewise the contemporary wives of the grandmother are not entitled to participate; they need only be maintained. For the reason above stated, the term grandmother refers exclusively to the natural parent of the father. This is the received opinion. But in truth, the word 'all' being used in the text above quoted, and the word 'grandmothers' being in the plural number, it is reasonable that the contemporary wives of the grandmother be also entitled to participate.*

II. When the patrimony left by the paternal grandfather is divided, the allotment of a share to the wives of that ancestor is ordained. Modern lawyers hold, that shares must in that case be allotted even to those wives of the paternal grandfather who have no sons.* Coleb. Dig. Vol. III. p. 24.

Vyavastha. 297. If the grandmother happen to be the heiress of a grandson deceased, she will, as such, inherit his share, and also on partition, she will, as grandmother, get her proportionate share.†

Vyavastha. 298. The grandmother is entitled to take a grandson's share, not only on partition between her grandsons themselves but also between her grandson and the heir or heirs of a grandson deceased.‡

* Some say that the grandmother here signifies the father's natural mother, for the reasons before explained. But others infer from the use of the plural number, and the mention of 'all', that all the wives of the grandfather shall have shares.—Sri-krisnasa's commentary on the Dāya-bhāga, Sans. p. 82.

† See Vyavastha No. 295 and whatever is quoted in illustration thereof.

‡ The Supreme Court Pandits say, 'if a son be one of the partitioning parties, with great grandsons, that she ought to take a son's share; and if a grandson be such a party, that she ought to take a grandson's share. They think themselves justified in this opinion by the principles of law, although the law itself is not expressly declared.—Cons. H. L. p. 59.

The following case was put by me to the Supreme Court Pandits: 'Supposing the mother of E, F, and G to be living, when the sons of E, the grandsons of F, and the great
Vyavastha. 299. If any of the grandchildren or the heir of a (deceased) grandson take his share from the rest, even then the grandmother is entitled to her share.

Vyavastha. 300. Of the immovable and movable property, if only one kind be divided, the grandmother will get her share in the same.

Vyavastha. 301. Like the widow, and mother, the grandmother also is not, without a legal cause, competency to dispose of the property received on partition.

"If he (the father) make the allotments equal, his wives must be made partakers of like portions." According to this text of Jányaválkya—as the father on making a partition of his own acquired property should give a share equal to that of a son to such of his wives as are destitute of sons, so by party of reasoning,—

Vyavastha. 302. The grandmother should have a share on partition of the grandfather's acquired property, and the mother should have a share on partition of the father's acquired property.†

Grandsons of G come to a partition—What share, if any, will the mother of E, F, and G take upon that partition? It will be between her grandchildren, her great grandchildren, and great great grandchildren. I was told that the Hindu law did not make any provision for such a case. I reminded them that the Hindu law gave a grandson's share to the grandmother upon a partition made among her grandchildren—and a son's share upon a partition made among her sons and her grandchildren. This they admitted to be the law. I asked them if it was not reasonable that she should take a grandson's share upon a partition made among her grandchildren, and her more remote descendants. The reasonableness of the thing they acquiesced in, and said, if such a case arose, they supposed it would be so decided, and that she would get a grandson's share.—Sir Francis Macnaghton's Considerations on the Hindu law, pages 42, 43.

* See ante, pp. 45-53.

† Partitions, to entitle the mother to a share, must be made of ancestral property or of property acquired by means of ancestral wealth. Therefore if the property have been acquired by A, the father of B, C, and D,—and B, C, and D come to a partition of it, their mother (the widow of A,) shall, but their grandmother shall not, take a share; and if the estate shall have been acquired by B, C, and D, themselves, then neither the grandmother, nor the mother, will be entitled to a share upon partition of it.—Cons. H. L. p. 54.
According to the maxim "the sense of the law ascertained in one instance, is applicable in others also, provided there be no impediment"—it appears to be reasonable that on partition the grandmother or the mother should have a share only of the estate acquired by her own husband.

"In like manner, in a partition about to be made of the grandfather's wealth by the grandsons, the grandmother must be made an equal sharer." (Dā. kra. sang. p. 103.)

"When partition is made by a father, he must give to such of his wives as have no male issue an equal share with his sons; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves." (Coleb. Dig. Vol. III. p. 27.)—These are the passages of two of the law tracts prevalent in Bengal that speak with perspicuity of the grandmother's right to a share on partition, and from these it also appears to be clear and unquestionable that when the grandfather's property is divided by the sons of his only son, the grandmother is entitled to a share equal to that of any of the grandsons. But when the grandfather's property is divided by such grandsons as are sons of several fathers, and each set of brothers is unequal in number with the sons of each of their uncles, the books do not lay down what should in that case be the extent of the grandmother's share—is she to receive a share equal to that of that grandson who receives the largest or who receives the smallest portion? For instance, if one son left an only son, another two sons, and a third nine, they at first divide per stirpes, and the set composed of two brothers subdivide their joint portion into two shares, and the set composed of nine subdivide their joint share into nine shares: in this case, is the grandmother to get a share equal to that of the single grandson, or that of one of the two, or that of one of the nine grandsons? Sir Francis Macnaghten says: "If B, C, D, the sons of A, shall have died before partition made, and each of them have left sons; then upon a partition of these sons of B, C, and D, their grandmother (the widow of A,) shall not be entitled to one fourth, as she would have been, had either B, C, or D, been living at the time of partition—but she shall share with grandsons per capita, although they will share per stirpes. Thus if B shall have left two, C three, and D four, sons;—the estate of A shall be divided into ten parts,—of which his widow (the mother of B, C, and

* See ante, pp. 425, 426.
D) shall take one,—the two sons of B shall take three,—three sons of C shall take three,—and the four sons of D shall take three." (Cons. H. L. pp. 52,53.) As in the above case the shares of some of the grandchildren would be much larger than the portion of the grandmother and as the law does by no means provide that in a case like the above the share of the grandfather, must be equal to that grandson’s share who receives the smallest portion, the best living authorities were consulted on the point; and after a mature consideration the conclusion arrived at by them is that the grandmother should get a grandson’s share where the grandsons inherit and divide per capita, and a son’s share where the grandsons inherit per stirpes and (originally) divide according to the number of their fathers (sons of the late proprietor.) The following is the abstract of the written opinion of Bābu Prosannako-kumār Thákur, the first of the authorities consulted on the occasion:—

"If the sons of a deceased owner all died in his life-time, or having survived their father, all died as joint and undivided owners of an estate left by their deceased father, in either case, on the occasion of partition of such estate by the grandsons, is the grandmother entitled to any, and if so, what share according to the Hindu law prevalent in Bengal? The author of the Dāya-bhāga in Chapter III. Section 2, Page 64. paragraph 32, states as follows:—

"Wives of the father (meaning step-mothers) who have no male issue, not those who are mothers of sons (must be rendered) equal shares (with the son.) So Vyāsa ordains: ‘Even childless wives of the father are pronounced equal shares; and so are all the paternal grandmothers: they are declared equal to mothers.’ Vishnu likewise says, ‘Mothers receive allotments according to the shares of sons; and so do unmarried daughters.’

"The commentators on the above work, perhaps thinking it unnecessary or from oversight, are entirely silent as to the purpose and intent of the passage, viz. ‘and so are all the paternal grandmothers: they are declared equal to mothers.’

"The Digest of Hindu Law, Book V. Chapter II. page 27, states only on the above point that ‘when partition is made among sons or grandchildren, they must allot to their natural mother or grandmother an equal share with themselves.’"
"Here the right of the grandmother to a share on the partition of her husband's estate is clear and positive, but it is not equally clear whether the amount of that share will be equal to the share of the sons or grandsons. The latter take per stirpes, i.e. divide among themselves the shares of their respective fathers."

"If, following the preceding rules for the construction of the law in question, the pandits' opinion cited by Sir F. Macnaghten be examined with the reason of the law, the fallacy of their dictum will be evident. The Pandits, it is supposed, have supported their views by torturing the letter of the law,—as by the passage in the Dáya-bhága 'so are all the paternal grandmothers: they are declared equal to mothers.' In the passage of the Digest of Hindu Law,—'To allot to grandmothers an equal share with themselves,' the words 'equal share with themselves' are construed separatively instead of collectively, so as to mean according to the share of each grandson. If such construction be adopted, it will be liable to the following objections."

"The several sons may not have left an equal progeny, i.e. one of them may have left one son and another four sons; and since grandsons succeed to the estate of the grandfather per stirpes, and not per capita, their shares may be very unequal. For instance, the only son of his father will receive one share, and each of the sons of his uncle will obtain but a fourth of that share. In what proportion then is the grandmother to share in the estate? or with whose share is hers to be co-equal?"

"Supposing that, to comply with the pandits' construction, the estate of the deceased is divided, according to the number of grandsons, into five shares, for the purpose of creating a share for the grandmother, by taking a fifth from each of the grandsons to make up the said share. In this case, as the grandson who is the only son of his father, takes a moiety of the property and gives one-fifth of the fourth (part of his share) as his portion to the said share, each of the other four grandsons who take but an eight of the estate, is obliged to contribute in the same proportion, which is an obvious hardship on these—the obligations of all the grandsons being the same, but their contributions very unequal in proportion to the benefits received by them severally."

"The grandsons inherit the estate per stirpes, but, according to the pandits' construction, when the several sons have left an unequal pro-
geny, they contribute to the grandmother’s share per capita. It is inconsistent with the reason of the law that they should inherit according to one rule, and contribute according to another to the grandmother’s share, especially when it is considered that the grandmother’s right is on the estate of her husband, and the grandsons inherit it subject to that charge.”

“The usual rule for the construction of the Hindu law is thus declared by Vrihaspati:—‘A decision must not be made solely by having recourse to the letter of written codes (Shástra;) since if no decision were made according to the reason of the law (or according to immemorial usage, for the word jukti admits both senses) there might be a failure of justice.’”

“When the reasons laid down in the Shástra for the share of the mother and the grandmother, are taken into consideration, there cannot be any other conclusion than that they are respectively entitled to a share equal to that of their sons.”

Regarding the great-grandmother’s right to a share on partition of the great-grandfather’s property, Jagan-nátha in one place of his Digest (Viváda-bhangárgava) says; “However, there is no reasoning which can show it incumbent on the great-grandsons, and the rest, to allot a share to their great-grandmother. No allotment shall be given to a great-grandmother. Such is the opinion of Jimúta-váhana and the rest;’ and in another he affirms: “When property left by the paternal great-grandfather is divided, should not a share be allotted to his wife?—that is admissible from parity of reasoning.”

The latter opinion of the author seems to be consistent with reason; for although the Hindu law does not expressly recognise any right of the great-grandmother upon partition made by her great-grandsons and the rest, yet if the mother and grandmother can be entitled to shares on partition of their respective husbands’ estates, and when she, equally with the grandmother, has been recognised to be one of the enumerated heirs, then it is inconsistent with reason that she should be deprived of a share on partition of her husband’s estate: on the contrary, according to the general maxim—‘the sense of the law ascertained in one instance, is applicable in others also, provided there be no impedi-
ment,*—it is proper that she have a share on partition of her husband's estate.† It is however to be observed, that, her claim to a share arises only when her husband’s property is divided by her great-grandsons or these and other descendants, and not when any other ancestor's estate is partitioned by them.

The unmarried sister should have a sum sufficient for her nuptial ceremony.

"Mothers are equal sharers with them (i.e. the sons;) and daughters are entitled to a fourth part"—Vṛihās-pati. "For the unmarried daughter a quarter is allowed; and three parts belong to the son. But the right of the owner (to exercise discretion) is admitted when the property is small."—Kāṭyāyana. "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they who refuse to give it, shall be degraded."‡—Manu.

According to these texts sons are entitled to three quarters, and the unmarried daughters (on partition made by their brothers) to one quarter or to a deduction of one fourth out of their each brother’s share. But the authorities prevalent in Bengal do, however, conclude that that right entitles the maiden daughters only to sums enough for their marriage. Thus Jīmūta-vāhana alluding to the above text of Manu, declares: "From the mention of giving, and denunciation of the penalty of degradation if they refuse, it appears, that portions are not taken by daughters as having a little to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance. Thus Jāṇyavalkya, saying,

* See Dā. bhd. page 63. Note 31.
† Unaware of the above maxim and nicety, Sir Francis Macnaghten seems, to have made the following remark:—"If the widows, sons, and grandsons shall all have died without having come to a partition, and then the great-grandsons shall divide the estate among them; their great-grandmother will not be entitled to any share of the estate so partitioned by her great-grandsons; although she would have been entitled to her proportion if her sons, or her grandsons, had divided, or if a son or grandson had been dividing with more remote descendants. Her great-grandsons are morally bound to maintain her;—and from what has occurred in the Supreme Court, I venture to say that there a performance of this moral obligation, may be legally enforced.—Cons. H. L. pp. 51, 52.
‡ According to Jīmūta-vāhana the last text applies to the case where the funds may be small, for he expressly says: "If the funds be small, sons must give a fourth part to daughters deducting it out of their own respective shares."—Dā. bhd. p. 55.
'Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share,' declares the obligation of disposing of them in marriage, not their right of succession. Thus, (since the daughter takes not in right of inheritance,) if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned. This (allotment of a fourth part if funds be small) must be understood as applicable only where the number of sons and daughters is equal. For if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal in relation to the inheritance."*—Dá. bhá. pp. 65, 66.

Srí-krishna observes: that "the sisters also of these sharers must be rendered participators to the amount of a fourth share receivable by their brothers respectively, for the purpose of marriage."*—Dá. Kra. Sang. p. 105.

Raghu-nandana too affirms: "The text which ordains the allotment of a fourth part (to the unmarried sisters) intends the appropriation of a sufficient sum for the nuptial ceremony."* (Dá. T. p. 19.) See Coleb. Dig. Vol. III. p. 91.

* I know not of an instance in which sisters have shared upon partition, nor did I ever hear of a sister's claim having been brought forward when her brothers divided the estate. I conclude, therefore, that her right does not exist by the Hindus law as it is prevalent in Bengal. Perhaps it is better that she should be entirely excluded; for if the right were admitted, it would be difficult, if possible, to ascertain its extent.—Cons. H. L. p. 98.

It is a duty, however, and one, the performance of which is, I believe, generally secured by family pride to bestow the sisters suitably in marriage—and this is all I can say for the rights of sisters.—Ibid. p. 56. See also ibidem. pp. 102—105.

In fine, this provision for the sisters, intended to uphold the general respectability of the family, is accorded rather as a matter of indulgence, than prescribed as a matter of right.—Macn H. L. Vol. I. p. 51.
VYAVASTHA-DARPANA.

EFFECTS, ACQUISITIONS &C. LIABLE OR NOT LIABLE TO PARTITION.

Effects, acquisitions &c. liable to partition.

Vyavastha. 303. These three descriptions of property, viz. ancestral, acquired by the father, and acquired by the use of the joint stock, are partible among all.*

Authority. What belonged to the paternal grandfather, or to the father, and any thing else (appertaining to the co-heirs having been) acquired (a) by themselves, must all be divided at a partition among co-heirs.—KÂTYÂYANA.

(a) And any thing else]—By the conjunctive particle 'and' is meant that the acquisition must have been made through the common property; (or else by joint personal labour.)

Vyavastha. 304. But property acquired by individuals through their own exertions, must be shared exclusively by the acquirers.*

Vyavastha. 305. Land (inherited in regular succession, but) which had been formerly lost, and which one shall recover solely by his own labour, the rest may divide according to their due allotments, having (first) given him a fourth part.*

Vyavastha. 306. Property gained by science, and such other means, without the use even of the joint funds,† should be shared with the parcenârs equally or more learned: not with less learned or unlearned parceners.

Vyavastha. 307. Property acquired or recorded in the name of one of the undivided co-parceners must be presumed to be joint and divisible amongst them all—unless it


† See Vyavasha No. 314, and the authorities relative to the same.
be satisfactorily established that it was acquired by any of them with his own funds and without the assistance of the other co-parceners or any of them.

\textbf{Vyavastha}. 308. Property gained by science with the use of the joint stock, must, however, be shared with all the parceners.\footnote{Vide \textit{Dā. bhd.}, p. 112; \textit{Dā. kva. sang.}, pp. 71, 72; \textit{Coleb. Dig.}, Vol. III, pp. 382-385.}

\textbf{Authority}. I. No part of the property, which is gained by science, need be given by a learned man to his unlearned co-heirs: but such property should be yielded by him to those who are equal or superior in science.\textit{—Kātyāyana.}

\textbf{Authority}. II. A learned man need not give a share of his own acquired property, without his assent, to an unlearned co-heir: provided it were not gained by him using the paternal \textit{(i)} estate.\textit{—Nārāda.}

\textit{(i)}. The word 'paternal' intends joint property.—What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned co-heir: but to a learned or instructed co-heir he must give a share of any thing acquired by him even without the use of joint property.

\textbf{Authority}. III. His own acquired wealth, a learned man need not give up, against his inclination, to unlearned co-heirs.\textit{—Goutama.}

What is gained by his personal labour of his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, unto unlearned co-heirs; but he must yield it to the learned brethren.*

\textbf{Vyavastha}. 309. Whatever property has been earned through valour \textit{(u)} by brothers who have derived science from their family \textit{(e)}, or even from their father, is partible: this is declared by \textit{Vṛishapati}.\footnote{Vide \textit{Dā. bhd.}, p. 112; \textit{Dā. kva. sang.}, pp. 71, 72; \textit{Coleb. Dig.}, Vol. III, pp. 382-385.}

\textit{(u) 'Earned through valour'}—that is, the gains of valour acquired by means of the expenditure of the joint stock; for it will be hereafter
declared that property acquired without the expenditure of the joint-stock is indivisible.*

(c) 'From the family'—that is, from their own family: the meaning is, that the property earned through valour by brothers, who were taught in science by their paternal grandfather, uncle, and the rest, is partible.—Kalpitaru and Ratnakara cited by Raghu-nandana. See Dá. T. Sans. p. 24.

Vyavastha. 310. An acquisition made through any science imparted by others than a father, an uncle, and the rest (of the acquirer's own family,) and without the use of the joint stock, must (however) be shared with co-heirs equally or more learned;—but not with those who are less so, or who are ignorant.*

Vyavastha. 311. If, during the period of acquisition of science (by one brother,) another brother should, through his personal exertions and by means of his own funds, support his (the student's) family, then the other brother, even though ignorant, is entitled to a share of the property gained (by the learned) through science.*

Authority. He, who maintains the family of the brother studying science, shall take, be he ever so ignorant, a share of the property gained by science.*—Nárada.

Vyavastha. 312. If the support were afforded by two, or by three unlettered co-heirs, then all these shall participate.*

By parity of reasoning.—

Vyavastha. 313. The brother left to support or protect the family of a brother gone abroad for acquisition, should have a share of such acquisition.†


† The Hindu law of partition contains one anomaly, which would at first sight appear unjust and absurd. I allude to that rule which entitles an idle brother to claim a share
314. Wealth gained without the use of the joint-stock, belongs to the acquirer alone, not to the rest of the co-parceners. *

Reason. As the rest of the brethren participate [in one case] on account of the employment of the common stock, it is fit that their participation should be null [in another case] where that does not exist. *

Authority. I. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion (o)."—Manu and Vishnu.


An expenditure of wealth for nourishment or other use, must however necessarily be made even by a person remaining at home; and such expenditure is not designed for the acquisition of wealth; but its having been actually intended for that purpose is a requisite (to its being the cause of gain;) consequently the supposition does not go too far. Accordingly, Vishva-rāja has said: "When wealth is not acquired by giving (or using) paternal property, it is declared not to be common, merely because property may have been used for food or other necessaries; since that is similar to the sucking of the (mother's) breast."

Hence though much wealth belonging to the father have been expended in festivity at the son's initiation, or at his wedding, what is obtained by him in alma during austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.—Da. bhaf. p. 124.

The rest of the brethren can only claim shares of that wealth, for the acquisition of which money was expended (out of the family estate,) or which was acquired by learning attained through the instructions of the father with a maintenance provided out of the
(o) Since the patrimony is not used, there is no exertion on the side of the others, through the means of the common property: and, since it was obtained by the man's own labour, there is no corporal effort on the part of the rest: it is, therefore, the separate property of the acquirer alone.

**Authority.** II. Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials (k.) does not appertain to the co-heirs.—*Jāngyavalkya.*

(k) Here the mention 'a present from a friend' and so forth is intended for illustration only; since it is in such modes that acquisitions are usually made without expenditure.

(k) 'Gift at nuptials'—that is, received from the parents-in-law by reason of having become their son-in-law.—*Dā. kra. Sang.* pp. 77, 78.

**Authority.** III. Wealth gained by science, or earned by va-
lour, or what is *soudāyika* (g.) belongs, at the time of partition, to him (who acquired it;) and shall not be claimed by the co-heirs.—*Vyāsa.*

(g) What is obtained through favour or the like, from a father, uncle, or other kind relations, is *Soudāyika.*

IV. What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs; nor that which is acquired by learning.—*Vyāsa.*

Since it is expressed in general terms, "what he gains solely by his own ability," all property, so acquired, being his own, is not common. But as the gains of science, though obtained by the man's own ability, are shared by parencers equally or more proficient in knowledge, the phrase 'nor that which was acquired by learning,' is subjoined for the sake of excluding illiterate or less learned parencers.

---

patrimony. Accordingly it is remarked by *Nimuta-vāhana,* that wealth acquired by the use of the common stock employed for that very purpose, is justly considered as joint property.—Coleb. Dig. Vol. III. p. 511.

The practice of dividing wealth gained by receipt of presents without expenditure of the joint property, which is observed to prevail among virtuous people, is not however unsuitable, whether founded on the mutual affection of the brethren, or on a manly sentiment.—*Ibid.* p. 125.
Vyavastha. 315. If one of the co-heirs, without expenditure of the joint funds or unaided by the exertions of the other co-heirs, recover ancestral property usurped (before,) such property is not divisible among them.*

Authority. He who recovers (i) hereditary property, which had been usurped, shall not give it up to the co-partners: nor what has been gained by science.—Jñavyavalkya.

(i) The word "recovers" being used in the singular number, it is meant that the recovery must be even without the corporal aid of another.—Śrī-krishṇa’s Commentary on the Dāyā-bhāga, Sans. p. 120.

Thus the author, denying the right of unseparated co-heirs, in the property, because it has been recovered, although a trace of the former right exist, denies the remoter title of the rest to wealth originally gained by the man himself.*

The declaring of property common, merely because it was gained by an unseparated co-partner, is not (therefore) grounded on authority.*

The rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself. (Dā. bhā. p. 135.) Regarding land there is an especial rule.—See ante, pp. 429 & 497.

This therefore is ascertained from the above and other texts:—‘What has been acquired by a separated or an unseparated parcener without adventure of the joint stock, and without the corporal aid of another, belongs exclusively to the acquirer, and is indivisible with the rest.*

There is only a distinction in regard to the gains of science, which is as follows:—

Vyavastha. 316. What is gained through any science not acquired from a member of the family, and without the use of the joint-stock, † is not liable to partition

† See Vyavastha’s Nos. 308, 309 & 310 and the authorities &c. relative thereto.
among the less learned, and ignorant co-heirs, although divisible among the parceners of equal or superior learning.

Authority. I. No part of the property, which is gained by science, need be given by a learned man to his unlearned co-heir: but such property should be yielded him to those who are equal or superior in science.—Kātyāyana.

Authority. II. The gains of science do, however, belong exclusively (t) to him who acquired the same, and so does any thing given by a friend, received on account of marriage, and what is obtained as Mādhu-parkika (d).

(t) By the use of the term ‘exclusively’ an illiterate person and one of inferior learning are excepted.—Śrī-krishṇa’s Commentary on the Dāya-bhāga. Sans. p. 123.

Hence the term ‘impartible’ as used in the present instance affects only an illiterate ce-heir and one of inferior learning; inasmuch as the gains of science which are declared impartible are in fact divisible among the brothers of equal or superior learning.


As a mark of respect at the time of giving a Madhuparka.—Kullāka Bhatta.

The gains of science are explained by Kātyāyana, thus: “what is gained by the solution (of a difficulty,) after a prize has been offered, must be considered as acquired through science, and is not included in partition (among co-heirs.) What has been obtained from a pupil, or by officiating as a priest, or for (answering) a question, or for determining a doubtful point, or through display of knowledge, or by (success in) disputation, or for superior (skill in) reading (the Vedas,) the sages have declared to be gains of science, and not subject to distribution. The same rule likewise prevails in the arts; for the excess above the price (of the common goods,) and what is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition: so Vṛhāspatī has ordained.”*

* 1 'By the solution (of a difficulty)’—As where one agrees with another, 'If you solve this well, I will give you so much money': after such an offer, if one solve the difficulty and
vyavastha-darpaha.

(Vyāyana further says: “Wealth gained through science, which acquired from a stranger, while receiving a foreign maintenance, med acquisition through learning.”)*

Legal opinions delivered in, and admitted by, the several courts of judicature, and examined and approved of by Sir William Macnaghten.

There were five brothers, one of whom, subsequently to the r's death, obtained a rent-free Mouza in his own name and in the name of one of his brothers, and died, leaving the four brothers above ed to and a widow. Does the Mouza in question belong to all rothers, or only to those in whose names the grant of it was n out?

the price, it is not subject to distribution. 'From a pupil'—that is, what is received by a pupil to whom instruction has been afforded, or what the pupil, studying the texts of the Vedas, gives for the worship of the gods, or similar purposes; or what a student, coming to the Vedas, gives as a mark of respect to his preceptor. 'By officiating as priest,'—what is received as a fee or gratuity from a person employing him to officiate at a sacrifice, is not presents; for they are similar to wages or hire; or what is given as alms to the gods, or as a mark of respect for the officiate. 'For answering a question'—that is, a question relative to science being asked of any one, through satisfaction, give any thing which had not been previously known. 'For determining a doubtful point'—that is, for determination on a question, proceed with a view to the removal of doubt, and in this form: 'I will give this gold or property to him who dispels my doubt on this point of the Shāstra; or a fee of the sixth part of the price received for a correct decision between two litigant parties in the determination of a dubious and contested point. 'Through display of pictures'—that is, what is received as a present or the like for luminously displaying his picture in the sacred ordinances and so forth. 'By (acquaintance in) disputations'—that is, a point by surpassing the opponent in a contest between two persons respecting their picture of sacred ordinances, or in any other controversy whatsoever concerning their picture of scientific attainments. 'For superior (skill in) reading'—that is, what is received for the display of a superior manner where a single article is to be given, and is which manyuia. 'In arts'—that is, what is gained by painters, goldsmiths, and other artists, in skill in the arts and so forth. 'For the excess above the price'—that is, what is gained in common goods &c. and making earnings, &c. above the value of the goods &c. by the use of art. And also what is won by beating another at play: all these are gains of the rest. Vide Coleb. Da. bhā. pp. 127—129;—Da. Kṛa. pp. 178—179;—Coleb. Dig. Vol. III. pp. 338—339;—Śrīkrishna’s Commentary on va-bhāga, Sans. pp. 140, 141.

According to Jñānta-ekhana and the rest, the circumstance of receiving foreign sance while taught by a stranger is not however a requisite condition for the wealth derived through science being indivisible, inseparable, as an expenditure for food and so forth is considered as being designed or used for the acquisition of wealth. See ante p. 407.
The acquisition of a man made by his own means alone is not divisible among his brothers.

R. Whenever property, movable or immovable, may have been gained by a co-parcener without detriment to the paternal estate, such acquisition becomes his sole property, and the other brothers have no right to claim it. Should there have been joint labour and joint funds used, the acquisition must be equally divided among the brothers, as declared by Manu and Jānyavalkya: "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning." "Whatever else is acquired by the co-parcener himself, without detriment to the father’s estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs."—Macn. H. L. Vol. II. Ch. 2. Case 16 (pp. 161, 162.)

Q. A person, living with his half-brothers as a joint and undivided family, without having come to a separation, proceeded to a foreign country, where he held an official situation, and purchased some landed property. In this case, is the half brother, from the circumstance of his living in co-partnership with the acquirer while the acquisition was made, entitled to any portion of the estate; if so, how will the property be shared between them?

A man has no title to share in acquisitions exclusively made by his unseparated brother.

R. Under the circumstances above stated, according to the doctrine contained in the Dīya-bhāga and other law books, the brother of the half blood has no title to participate in the property, from the circumstance of his continuing with the acquirer as a joint and undivided family when the acquisition was made.—April 17th, 1815. Macn. H. L. Vol. II. Ch. V., Case 15 (p. 161.)

Q. Two Hindoos were living undivided in respect of food, and in joint enjoyment of the produce of their ancestral tálook. One of them, by means of borrowed money, purchased some lands. In this case, is the other individual entitled to participate in the lands so purchased?

Land purchased by one co-parcener with borrowed money, can not be claimed by another who was not joining in the transaction.

R. It appears in this case, that one of the individuals above alluded to, while he and his co-parcener were living in the joint possession of their patrimonial real property, and jointly in respect of food, purchased some land with borrowed money; but it is
not distinctly stated whether the debt was contracted, and the purchase was made, with or without the consent of the co-parcener. Supposing the transaction to have happened with the consent of the other partner, then he is entitled to participate, and must pay the debt proportionally; but, on the other hand, if he was no party to the transaction, the purchaser has an exclusive right to the property, and he is alone bound to liquidate the debt.—City Dacca. June 21st, 1810. Macn. H. L. Vol. II. Ch. V. Case 6. (pp. 151.)

Q. 1. Whether, by reason of the father of the appellants having messed jointly with the grandfather of the respondent, at the time he purchased the Zemindaree and built the house, but without paying any part of the cost, and without there being any joint hereditary funds, the appellants had any claim in law to share in the estate or house?

R. 1. If the grandfather of the respondent purchased the Zemindaree singly, with the produce of his separate industry, and without any aid from funds ancestral or paternal, such Zemindaree is property exclusively his, in which no other can have a right to participate. And if he obtained a brohmottur sunud for land in his own name, (which it appears he did,) no one else can participate in it. And supposing him to have built a brick house on ancestral land, with separate funds of his own, even in that case such house would not be property in which shares might be claimed by any co-parcener he might have: co-parceners in the land would only have a claim on him for other similar land, equal to their respective shares. Such is the custom, or unwritten law. From the mere circumstance of messing conjointly, co-partnership in property does not follow.

Q. 2. Supposing them to have a claim, what would be the share of each? and whether after the lapse of thirty eight years, during which the respondent's grandfather and father had been in possession, a claim on the part of the appellants, for separate shares, was maintainable?

R. 2. Had the appellants been originally entitled to shares, they could have taken them after thirty eight years, or after any length of time as far as the fourth in descent.
Authorities:—The text of Manu and Vishnu, cited in the Dáya-bhága: “What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion.”

Sankha and Likhita:—“There is no division of a house or garden made by one son for himself: nor of water-pots, ornaments, utensils for food, and the like, nor of concubines or clothes, nor of water in pools or wells, nor of pasture grounds and roads: so said the Lord of created beings.”

Devala:—“Partition of heritage among undivided partners, and a second partition among divided relatives living together after reunion, shall extend to the fourth in descent: this is a settled rule.”


Q. There were two brothers who during the life-time of their father, and while they were living together as an united family, purchased some landed property with their respective separate funds, and retained their respective acquisitions severally, not jointly. On the death of the father, his property was shared equally by his two sons. The property in dispute is that which one of the brothers, since deceased, purchased in the name of his son with his wife’s money, while his father was alive, and while they were living in a state of union. In this case, is the surviving brother entitled to claim any share of the property so purchased by the deceased?

R. Under the circumstances above stated, it does not appear that the property in question was acquired either with the funds or labour of the father or of the surviving brother, consequently the brother, though living in a state of union with the acquirer, has no concern with his acquisition.

Authorities:—

The following texts are laid down in the Dáya-bhága and Mitak-shará: “What a brother has acquired by his labour without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science.”
‘Whatever else is acquired by the co-parcener himself, without
detriment to the father’s estate, as a present from a friend, or a gift
at nuptials, does not appertain to the co-heir.’—Daca Court of Ap-
peal. January 18th, 1820.—Macn. H. L. Vol. II, Ch. V, Case 10
(p. 156.)

Q. A boy received some jewels and other articles as joutaka* at
the time of his annaprásana; and his mother having sold those pre-
sents, purchased a landed estate with the produce of the sale in his
name. In this case, is his other uterine brother entitled to share it
with him?

R. Whatever property (whether consisting of or-
naments or other effects) is given as joutaka to a
boy, that is to say, presented to him at the period
of one of his initiatory ceremonies, such gift is his
exclusive and absolute property; consequently his uterine brother has
no title to share the property which was purchased by his mother with
his funds.—Zillah Midnapore, November 25th, 1817.—Macn. H. L.
Vol. II. Ch. V, Case 13 (pp. 159, 160.)

Radha-charan Roy, (Defendant,) Appellant, versus Krishnachara.
charan Roy and Guru-charan Roy, Respondents.

Case bearing on the vy.

The defendant appealed to the Sudder Dewanny
Adawlut, insisting, chiefly, 1st, that as the estate
was recovered to the family by his exertions, he was
entitled to a larger portion of it than the respondents; 2nd, that
the widow of Ram-dulal (who had come forward with a claim under
section 13, Regulation III of 1793,) had no right to more than a
maintenance; and that if she ever had any such right, she, as the
appellant could prove by witnesses, had relinquished it. In passing
judgment on the case, the Court remarked that the claim of the ap-
pellant to hold a larger share of the family estate than his bro-
thers, on the ground of his having undertaken the trouble and ex-

* The term “joutaka” signifies any thing received at the time of marriage. It is
derived from the verb “ju (to mix)” by adding the neuter affix, as an union of bride and
bridegroom takes place at the time of marriage. What is then received is called joutaka;
but the term is generally used to signify donations given at the time of each of the
Sanskars or ceremonies.
pence of recovering it from the usurpation of Santosh Roy (by suit in which judgment was obtained in 1778) could not now be supported, for were it founded on justice, it would have been brought forward by him when the cause, determined in 1778, was depending; as it would have entitled him, on the principle now insisted on, to a larger portion of the whole Zemindaree than the other claimants; whereas by that decree on which the rights of both parties in this case were grounded, the Zemindaree was divided into six equal portions. With respect to the right of the widow, the Court put a question to their pandits, by whose answer, as well as by a reference to the Digest of Hindoo Law, it appeared, that she was entitled to the whole estate of her deceased husband; and the Court considered that the assertion of the appellant, that the widow had verbally relinquished her right, was not entitled to any weight, inasmuch as the admission of oral testimony in cases of this nature would open a door to much fraud and injustice. The Sudder Dewanny Adawlut (preset P. Speke) therefore affirmed the Zillah decree, further directing that the widow should be put into possession of her husband's fourth share of the portion of Kushal Roy.* 25th of February 1801.—S. D. A. Vol. I. pp. 33, 34.

Case No. 259 of 1859.

Rám-rájá Dey, (Plaintiff,) Appellant, versus Ishán-chander Roy and others, (Defendants,) Respondents.

Cases bearing on the Vya-vasthá No. 207.

I. “The plaintiff, special appellant, sued on the following allegations. He said that talook Manohar Dey was the property of five Hindoo brothers, Manohor, Káshi-náth, and others, and that they held it 'ijmalee. On the death of Káshi-náth, or in Assin 1259, his son Gangá-dhar mortgaged his share of the property to plaintiff. Gangá-dhar, dying without heirs was succeeded by his nephews Radhá-mohan Bose and Guru-charan Bose who, on the 16th Falgun 1251, sold the property absolutely to the plaintiff. "The defendants declared that Manohar was the sole owner

* The rejection of the appellant’s claim in this case to a remuneration, which would consist in the allotment of a superior portion for his exertions in the recovery of his patrimony, was founded on special circumstances in this case, and did not proceed on the legal inadmissibility of that claim, the Hindu law sanctioning the allotment for an additional portion in such cases, with one quarter to the heir who retrieves the common property.—Deša-bhāg, Ch. VI. Sect. II. p. 29;—Colebrooke’s remarks on the above decision.
of the property, and that Gangā-dhar had no interest and had never been in possession.

The Moonsiff found the sale proved, and decreed the case in plaintiff's favor.

"The Judge on the ground that the name of Manohar alone was mentioned in the receipts for rent and other documents, decides that he was the sole owner, and throws out the plaintiff's claim.

"A special appeal is preferred, on the ground that the Judge has overlooked the usual practice in joint Hindoo families of all transactions being carried on in the name of one brother; that the presumption must be that the family was a joint one, and that defendant ought to have been called upon to prove either that separation had taken place or that the property was self-acquired."

"We admit the special appeal to try this point."

JUDGMENT.—

On a reference to the answer of the defendant in this case, we find that it is clearly the purport of that pleading to state that the defendant acquired the rights of Manohar, as holding the property in suit on his own separate title, although the family was a joint undivided Hindoo family.

Where a Hindoo family is joint, the presumption always is, that property acquired by its members is obtained from the joint funds; and where a title is set up, based on the plea that the property had not been so obtained, but self-acquired, it is for the party urging that plea to prove that plea, and the burden of proof is rightly thrown on him. The judge has referred to the name of Manohar above appearing in the receipts and other papers relating to the management of the property. But this is not a sufficient test, inasmuch as, it is frequently the custom for the name of one sharer to be used as manager, while the rights and interests still remain those of a joint undivided family. The material test is the quarter from which the money comes; and under this view it was incumbent on defendant to prove that Manohar had acquired the property from his own separate funds.

We decree the appeal, and remand the case, to be retried by the Zillah Judge with reference to the above remarks.—The 17th of November 1858.—S. D. A. D. p. 1481.
CASE NO. 131 OF 1859.

Gudá-dhar Mojundár, (Plaintiff,) Appellant versus Bechá-rám Mondal and others, (Defendants,) Respondents.

II. This case was admitted to special appeal on the 26th of February 1859 under the following certificate recorded by Messrs. B. J. Colvin and D. I. Money. "This was a suit brought by Dási-sundari, now represented by petitioner to reverse a sale in execution of decree of a 10 anna share of certain property registered in the name of her son Mírtnjôy, but which had been sold for the debt of his own brothers Sristi-dhar and others, on the ground that it was self-acquired by Mírtnjôy, on whose death it had reverted to his mother Dási-sundari, original plaintiff aforesaid. The Moonsiff, rejecting the plea of self-acquisition, reversed the sale to the extent of only 2 annas which he considered was the share of Mírtnjôy, being the fifth of the whole, to which only he was entitled as one of five brothers. Both parties appealed, and the judge has disallowed the claim preferred by plaintiff in toto, as it was not based upon a right to a share by inheritance, but asserted a right to the whole in consequence of self-acquisition by Mírtnjôy. We also held that the ownus probandi rested with plaintiff."

"two pleas are put forward in special appeal, viz: that, notwithstanding the claim founded upon self-acquisition being rejected, plaintiff was entitled to Mírtnjôy's 2 annas share by inheritance, and that as the property had been registered in the name of Mírtnjôy, it was for defendant, and not for plaintiff, to show that Mírtnjôy had only a limited interest in it."

JUDGMENT.—

"We think there is no weight in the reasons on which this special appeal had been admitted. The plaintiff, the mother of Mírtnjôy, one of five brothers of an undivided Hindoo family, sues to reverse the sale in execution of a 10 anna share of certain property, which was brought to sale in satisfaction of a decree against the brothers of Mírtnjôy, on the ground that that was Mírtnjôy's self-acquired property.

The judge held that, as the property was that of an undivided Hindoo family, the presumption was that the property was joint, and
it rested on the plaintiff to prove that it had been purchased by Mirtunjoy alone. As she was unable to do this, the Judge dismissed her claim. The plaintiff now in special appeal alleges that the Registration of Mirtunjoy’s name in the collectorate, as the sole owner of the property, of itself rebuts the presumption as to the property being joint, and establishes a prímad facie evidence in his favor, and throws the burden of proof, that the property was joint, in the defendant. She urges also that, if not entitled to 10 annas as heir of her deceased son, Mirtunjoy, she is entitled to 2 annas of the property claimed under the Hindoo law of inheritance.

We think that the mere fact of the registration of one brother’s name in the books of the collector is not sufficient to rebut the presumption as to the property being joint arising from the fact of the family being undivided. Estates are often purchased and registered in the name of one or other of the sons of a joint undivided family. Such transaction are considered be-námi: and on that party’s claiming the whole property, the burden of proof lies on him to show that he is solely entitled to the legal and beneficial interest in the property. The custom in such cases is to consider from what source the money, with which the estate was purchased, came, and as plaintiff has been unable, in the present instance, to show that the property was purchased with the money of Mirtunjoy, her suit necessarily falls to the ground. These points have so frequently been laid down both by this Court and the Privy Council, by the latter Court in the rather recent case of Gopee-kishto Gosain versus Gangá-prasád Gosain, that they are not open to the slightest question.

As to special appellant’s second plea we would remark that it has been invariably laid down that a person claiming under a special title cannot, in that suit at least, on that title failing, fall back, upon his right under the general rules of Hindoo law. We think therefore that the decision of the Judge on both points was quite correct, and we accordingly dismiss the special appeal with costs.—The 17th of August 1859.—S. D. A. D. p. 1132.

Case No. 278 of 1855.

Keshab-chander Roy and others, appellants versus Dâmodar-chander Roy and others, Respondents.

III. Held in affirmation of the judgment of the principal Sudder
Ameen, that plaintiffs had established by the evidence adduced that a putnee acquired in the name of one brother, had been actually acquired both on behalf of plaintiffs as well as defendants.—The 10th of August, 1858.—S. D. A. D.

Case No. 15 of 1859.—18th of July 1862.

Jánaki Dási and others versus Krishña-kaml Singh.

In a Hindoo undivided family the mere fact that one brother's name was used in the documents relative to property, affords no presumption of his being sole proprietor, especially where he is the eldest brother, or is shown to be the managing member of the family.

IV. Defendant Krishña-kaml Singh, appellant in this case, was the second of three brothers, forming an undivided Hindoo family, possessed of considerable wealth as traders and Zemindars. The plaintiffs were widows. Jánaki was widow of the eldest brother, Rám-kaml, and Breshwarí was the widow of the youngest son Gobinda-chander. The widows brought this action to recovering the shares of their deceased husbands in the family property, from which they alleged they had been dispossessed by Krishña-kaml, Defendant.

The defendant pleaded several pleas, but principally that of separate acquirements from his private sources; and as to a part of the estates, Krishña-kaml's wife, Bhuban-moyí, appeared and answered that they were her sole property, purchased from her Strí-dhan.

The principal Sudder Ameen in a very elaborate and well considered judgment, declared these various pleas unfounded; and, except as to certain gold and silver ornaments, and cash balance, in respect of which the plaintiff had not given sufficient evidence, decreed to each one third share in the landed property, trading concerns all but one, and the premises in dispute.

The defendant appealed on the merits of the case, urging that in a long course of transactions from the year 1241 down to 1260, all purchases, dealings, receipts for rents, and other papers were in his name alone, without allusion to his brothers or their widows. Being desired by the court to point out the separate resources from whence this extensive property was acquired by the appellant, his pleader mentioned that gifts were received by him in the ceremony of Anna-prásana, and at his marriage, which he stated were carried to a sepa-
rate account, and were the foundation of his fortune; and referred to a series of_Khadás_ of the appellant, opening with a sum of Rs. 200 in hand.

_By the Court_—We have to observe that it has been settled by repeated decisions, that in a_Hindoo_family where commensality is admitted, the mere use of one brother's name in documents relating to property, affords no presumption whatever of such brother being sole proprietor; more especially where as in the present case, that brother has been, during the whole period embraced in transactions, both presumably as the eldest surviving brother, and as distinctly shown by the evidence, managing member of the family. With respect to the account, not only is there no authentic record of the first receipt and separate allegation of the sums referred to as defendant's private means, but the allegation is absurd upon the face of it. The defendant, when he is supposed to have those gifts, was not the eldest, but the second son. The actual eldest, _Rám-kamal_, as observed by the Principal Sudder Ameen, would, no doubt, have received much larger sums on two occasions of "_Anna-prásana_ and _Shádí_ (marriage;) the third brother would have also received his gifts and yet we are to suppose that the sums conferred on the second brother alone were set aside and reserved for his benefit. On this, then, and on the other points connected with the evidence, and set forth in the judgment of their lower Court, no reason whatever has been shown for differing from the conclusion arrived at there, and we accordingly dismiss this appeal with costs.—Marshall's Reports, Vol. I., p. 1.

_Kishori-maņi Dási, widow of Gadá-dhar Sen, (Plaintiff,) Appellant, versus Srí-kánta Sen and Párbarí Dási (Defendants)_

_Respondents._

_Cases_ bearing on the_vyasavasthá_ No. 314.

I. The zillah judge, Mr. B. Torrens, gave judgment to the following effect.—It is clear that the plaintiff's husband and the defendants formed a joint undivided family and there is no doubt that the property in dispute was purchased at a public sale in the name of _Srí-kánta Sen_. The question to be cleared up is whether the purchase was made with joint funds or with money belonging to the plaintiff's husband or to _Srí-kánta Sen_, the recorded purchaser. The evidence goes to the proof, that the money paid for the purchase belonged to _Srí-kánta Sen_, under such
circumstances he is exclusively entitled to the property under the precedent of *Subans-lál versus Harbans-lál* and another; and of *Pratápbáhádúr Singh versus Tilok-áhart Singh*, at pages 91 and 187, Vol. I. Sudder Dewanny Adawlut Reports. Further, the sale took place on 28th Phalgun 1231, B. S., corresponding with 10th March 1825 and this suit was instituted on the 22nd Bysack 1244, corresponding with the 3rd May 1851. As *Srí-kánta* was in possession, as proved by the evidence, under the purchase made by him, for a period of 12 years prior to the institution of the suit, it cannot be heard. So much of the Principal Sudder Ameen’s decree, therefore, as declares that the purchase was made with the joint funds and gives the plaintiff leave to sue de-novo, must be reversed.

A special appeal was then admitted by the Sudder Dewanny Adawlut on the application of the original plaintiff.

The Court (present Mr. R., Barlow) confirmed the decree of the Zillah judge.—4th January 1842. S. D. A. R. Vol., VII. pp. 67,68.

*Káli-prasád Roy and others, Appellants versus Digambar Roy, Respondent.*

II. With respect to 11 annas share of Mouza Gubree, &c., situated in purgunnah Binodnugur, which formed the Zemindaree of *Kishen-deb Roy*, it appeared to the Court to be established that, on his death, it was held in co-partnership by his sons *Káshi-náth, Ráj-chander*, and the plaintiff, and, on the death of *Káshi-náth* and *Ráj-chander* by the plaintiff, the defendants, and *Musst. Gour-mańi* the widow of *Ráj-chander*; and that there had been a separation of the family. With respect to Lot Mustole and the *putnee tálook* Nij Gubree, of which a moiety was claimed by the respondent, as having been purchased by him in the name of *Rám-sunder Roy* with money advanced from the joint funds of the family, the Court observed, that it had been established by the evidence, that these lands were purchased by *Rám-sunder Roy*, in his own name and in that of his servant, at a time when he was a member of an undivided family; but that there was no proof whatever of the fact of his having purchased them with money advanced from the joint funds of the family; that, on the contrary, it appears the profits of these lands had been enjoyed solely and exclusively by him; and that the whole evidence went to
show that he had purchased the said lands with his own money. In order, therefore, to determine the law, as connected with the circumstances of the case, the Court proposed the following questions to their Hindu law officers,

1st. If Lot Mustole and the putnee tálook Nij Guhree were purchased by Róm-sunder Roy, a member of an undivided family, with money realized from his separate industry, without aid from the joint funds of the family, will the other members of the family be entitled to share in the said lands?

2nd. Is Mussummat Gour-mañi entitled to any, and what, share of the undivided ancestral estate?

3rd. Has she a legal right to share the property purchased by Róm-sunder Roy, under the above mentioned circumstances?

The pańdits returned the following answer:—If Róm-sunder Roy purchased Lot Mustole and putnee tálook Nij Guhree, with the produce of his exclusive and separate industry, and without aid from the joint funds of the family, these lands belong exclusively to him and none of the other members of the family have a right to participate therein. Mussummat Gour-mañi is entitled (during her life) to one third share of the ancestral property, which, had her husband been alive, would have fallen to him; but she has no right to participate in the acquisition of Róm-sunder Roy from his separate funds.

On considering this opinion of the pańdits, the Court of Sudder Dewanny Adawlut (present R. Ker and G. Oswald) determined, that the ancestral estate of Krishña-deb Roy should be divided into three shares, whereof Mussummat Gour-mañi in right of succession to her husband Ráj-chander Roy, the heir of Káshi-náth, and the respondent Digamber Roy should each receive one share, but that the respondent should not participate in the acquisitions of Róm-sunder Roy, from his own funds, which were declared not liable to partition among the co-partners. Final judgment was given by the Sudder Dewanny Adawlut accordingly amending the decree passed in favour of the respondent by the provincial Court, and directing an immediate partition to be made of the ancestral estate, according to the distribution above determined on.—28th May 1817.—S, D. A. R. Vol. II., pp. 237—240.
III. The plaintiff and the principal defendant are brothers. The former sets forth in his plaint that in early life he left Bengal and proceeded to the North Western Provinces, where he obtained employment, and from time to time made remittances to his brother. That with the funds thus placed at his disposal his brother made purchases of land and household articles, and erected buildings, and also kept a certain amount in deposit. After his return to Bengal the brothers quarreled, and the quarrel led to this suit, instituted by the plaintiff for delivery to him of the money held in deposit by his brother, with interest and for a declaration of his (plaintiff's) right to a two-third share of the lands, buildings and household articles purchased with his money, and to one half of the ancestral property.

The defendants denied the right of plaintiff to any thing beyond a half share in the whole of the property under suit, alleging that the lands had been bought and buildings erected by their joint funds, and that whatever money had been received and not expended had, together with other moneys belonging to the defendants, been invested in Government securities on account of both though only in the name of the plaintiff.

The principal Sudder Ameen decreed the claim for the deposit with interest, and declared the plaintiff's right to a half share of the other property in dispute.

Judgment.—

The court are of opinion that the decision of the principal Sudder Ameen with regard to the deposit was quite in accordance with Hindoo law, was laid down in the authorities quoted in the course of the argument. Looking to the precedents in the cases decided in this Court, we hold that if property be acquired without aid from joint funds by one member of an undivided Hindoo family, others of the family who have in no degree contributed to the acquisition by personal exertion, though being at the time in family partnership, have no right to participate in the acquisition; we do not think that a person who re-
mains at home merely for the purpose of looking after the females and children of the family, can thereby be considered as having rendered such personal assistance as would entitle him to claim a share of any property which an absent member had purchased or acquired with funds accruing from his own unassisted industry.* In this case the plaintiff sued for a declaration of right to a half share of the ancestral property, possession of two thirds of certain buildings, lands and utensils, erected and purchased by his self-acquired funds, and for recovery of a sum of money held in deposit by the defendant on his account. The Principal Sudder Ameen on the ground that the plaintiff had been unable to show that the lands, buildings and household articles had been acquired by his sole funds, awarded him only half of these as well as of the ancestral property, but decreed to him the whole sum in deposit. The appeal is preferred against the award on this last point. We concur with the Principal Sudder Ameen in thinking that it has been satisfactorily shown, that the deposit was really acquired solely by the industry of the plaintiff when in service in a foreign country, and was remitted by him to his brother, and that the defendant's own letters clearly show that he promised to keep the money for him in deposit and not expend it.

The appeal is accordingly dismissed with costs.—The 3rd of January, 1853.—S. D. A. D. p. 1.

_Sri-mati Jādu-manì Dāsi versus Gangā-dhar Seal._

**Case bearing on the **_vyavasthás_** Nos. 273—
281, 304 & 314.

I. Colvile C. J. read the following judgment. The exceptions to the Master's separate report in this case were argued before Mr. Justice Buller and myself. The question which all the exceptions involve is, whether the accumulated profits of the trade carried on by the defendant during his father's life time and since his death, are to be treated as part of the joint estate for which he is accountable in this suit, or as a new acquisition by the separate industry of the defendant, therefore his separate property. The plaintiff's case as originally made by her bill, was that Rādhā-kānta Seal, the father of

* Although this part of the above case is partially opposed to the _Vyaavasthā_ No. 313, and the just remarks of Sir William Macnaghten thereunder cited, yet the other parts of it seem to be conformable to the law on the subject.
her deceased husband, Gopál-chander Seal, and of the defendant, in his life time established a house of business at Cossimbazar in which he carried on the trade of a silk and corah (korá) merchant, that he established a branch of the same trade at Calcutta, where he had also a Cootee or house of business, that the defendant Gangá-dhar on his coming of age was taken into partnership by his father, and usually resided in Calcutta and managed the business there, under the style of Rádhá-kánta Seal and Gangá-dhar Seal; that Gopál-chander on coming of age was also associated with his father and brother in the business, and chiefly superintended that branch of it which was carried on at Cossimbazar; that the family was joint up to Rádhá-kánta’s death, which took place in 1840, that it continued to be so after that event; the trade being carried on jointly and in the same way as before by the two brothers in co-partnership until the death of Gopál-chander in 1846, and that the plaintiff as widow, heiress and representative in estate, is entitled to his share in the profits of the trade and their accumulations.

The defendant has all along insisted that the trade was carried on by him alone and at his sole risk, and claimed the profits, and their accumulations as his separate property.

This issue was not decided at the hearing, because it then appeared that there was on either hypothesis some joint estate of which there must be an account and the question whether the profits of the trade which were included in that joint estate went before the Master unfettered by any declaration of the Court. It appears, however, to be the only substantial question in the cause,—the rest of the property being inconsiderable, and the Master having accordingly at the request of both parties made a separate report upon it, by which he finds that the said trade or business was a joint trade business between the defendant and his father and brother,—that the father during his life time and at the time of his death, was in all respects joint in estate with his two sons; and that after the death of his father, and during the life of Gopál-chander he and the defendant continued joint in estate in all respects. The broad question raised by the exceptions is whether this conclusion is right. Since the argument we have carefully read and considered the evidence taken before the Master. That evidence certainly discloses a state of things very different from the
case made by the plaintiff in her bill. We do not assign much weight to the loose testimony of Bholá-náth Barál, and the following seems to be the sum of the other evidence taken before the Master. The trade in question was not established by Rádhá-kánta Seal but by his son Gangá-dhar. Rádhá-kánta had been once engaged in the silk trade, but had been unfortunate in it and was arrested for debt. About the year 1814 his business ceased, and was never afterwards resumed although for some time he acted as a Pycar or Broker and Printer of goods. In or about 1817, his son Gangá-dhar Seal left Cossimbazar for Calcutta and there set up business on his own account partly with funds borrowed from his aunt, partly with stock in trade obtained in his sole credit. In 1827 the business was unprosperous and he returned for a time to Cossimbazar but he ultimately got out of his difficulties, returned to Calcutta and carrying on the trade partly on his own account and partly as Commission agent, acquired a considerable fortune. There is no reason to suppose that this trade which was clearly, we think, carried on in the sole name and ostensibly at the sole risk, of Gangá-dhar Seal, was in any degree aided by advances of capital out of the joint family funds. There is nothing that leads us to the conclusion that either in Rádhá-kánta Seal’s life time, or after his death, the general profits of this trade were treated as part of the joint estate, or that Rádhá-kánta or Gopál-chander ever asserted a right to participate in them. On the other hand, it would seem that, although the principal place of business was Calcutta, where Gangá-dhar for the most part lived, separate from the members of his family, part of the business consisted in the purchase of silks and corahs at Cassimbazar for transmission to Calcutta; and that Rádhá-kánta Seal in his life-time gave his son the benefit of his judgment and experience in the silk trade in making those purchases, and his assistance in the conduct of that part of the business, which went on at Cossimbazar receiving for the first year or so a commission, and afterwards being allowed by his son to retain, out of the monies that came to his hands, in order to meet the expenses of the family at Cossimbazar, sums varying in amount and not according to any fixed rate, but the accounts, we think, show that subject to those deductions the monies which came to his hands were accounted for by him to the defendant, not as between partners; still less as between the head of the family and a person
having only that interest which a son in the life-time of his father would take in the joint funds of the family; but rather as between an agent and his principal. The books of account were kept at Cossim-bazar and the goods purchased at that place were, until their transmission to Calcutta, stored in the family dwelling house.

We are satisfied upon the evidence that Gopál-chander, who seems to have been a person of idle and dissolute habits, never took part in the business, or actively contributed to the earning of the profits, of which his widow now claims a share: he appears, however, to have received an allowance which on the defendant's evidence is called a salary of rupees thirty per mensem, but, as it is sworn by way of bounty and not in return for any services actually rendered.

The family must be taken to have been undivided. It is however clear that a member of an undivided family may, by his separate exertion, acquire separate property for his sole and exclusive benefit. The case of Luxmon Row Sadasew versus Mullar Row Bajee shows, however, that the presumption in all such cases is in favour of the property being joint and that the burthen of proof is on him who claims it as separate. Again the case of Guru-charan Dás, Golack-maní Dásí and the authorities there collected show that the question in all these cases is whether the property in dispute is in the nature of an increment to the common stock, in which case it is divisible amongst the co-sharers equally, or whether of a new and separate acquisition, whether it has been acquired with the aid of joint funds, or joint labour, in which case the acquirer is entitled only to a double share, or whether the acquisition has been made without the aid of the joint funds, or joint labour, in which case it belongs to the acquirer exclusively. As we understand the law, the fact that the acquisition has been made by a son in the life-time of his father does not affect the question. No doubt, passages may be found in the Digest and elsewhere (I may instance a chapter in the third volume of the Digest, p. 53) which go to show that a son cannot acquire any property in which his father shall not be entitled to some share, but the law seems to have been otherwise settled in the case of Subans-lál versus Harbans-lál and Rudra-rám, an authority which is the more valuable since Mr. Colebrooke was one of the judges who concurred in the decision.*

* This, however, is applicable to the other schools.
VYAVASTHA-DARPANA.

Again it may no doubt happen, as in the instance of one of the Mullicks, in the case stated by Sir Francis Macnaghten at p. 48 of his work that the acquirer may cast his separate acquisition into the common funds, and thus make it part of them. But this cannot be said to have happened here. Though the accounts and the other evidence show disbursements for the expenses of the family and other common purposes, they imply the retention of the bulk of the property according to its original character. The question, therefore, really resolves itself into that which was chiefly argued before us viz. whether the profits of the trade and their accumulations fall within the second or the third of the categories above stated, whether they are acquisitions made with, or without, the aid of the joint funds, or of joint labour.

The rule that if the acquisition be made with the aid of joint funds or labour the acquirer can take no more than a double share, seems to be subject to the further qualification that the aid must be in itself considerable and must have been directly instrumental in making the acquisition. It appears to us that the partial use of the family house at Cossimbazar for the purposes of the defendant's business, fall within this qualification and can give no right to treat the acquisition as other than his exclusive property. There is greater difficulty about the services rendered by the father which certainly seem to have been valuable, and these as we were told during the argument constituted the principal grounds upon which the Master came to his conclusion. But with great respect for the late Master (Mr. Cochrane) we think that he has not sufficiently adverted to the very special circumstances of this case: let it be granted that such services unexplained would have the effect which on the plaintiff's side it is contended we ought to give them. We apprehend, however, that there is nothing in the Hindoo law to prevent a father, if so minded, from assisting his son in a separate trade, either gratuitously or upon terms other than those, which in the absence of any express understanding between them, the law would imply. There is nothing which would prevent him from saying, 'you my son have engaged in trade with your own capital, and at your own risk, I seek not to share in that trade, but in return for that assistance which you its richer member, give to the family, and from my affection for you I will give you the benefit of my judgment and experience, and look after your business in this place.' Brij-ruttun Doss versus Brij-paul
Doss shows that the relation of principal and agent paid by a commission, may subsist between a Hindoo and his father. That precise relation subsisted in this case only for a short time. But the arrangement substituted for it did not differ in principle from it. That such was the understanding of the parties does not depend only on the testimony of the defendant and his witnesses, confirmed as we think that testimony is, by the accounts, it is materially corroborated by the proved acts of the parties, by the absence of all claim by Rádhá-kánta in his life-time or by Gopál-chander after his death. The question is always one of fact, though a fact determinable in the absence of evidence strong enough to rebut the presumption, by the legal presumption that the property is joint, and it appears to us that we should be really acting inconsistently with the true state of facts as proved, and with the justice of the case if we were to allow the plaintiff to take that, which those through whom she claims, never thought of claiming, and that there is nothing in the Hindoo law, properly understood and applied, which forces us to do this, on the contrary we think that the defendant has sufficiently relieved himself of the burden which the law casts upon him of showing that the profits of this trade were his separate property, and that the exceptions should be allowed.—S. C. Boulnois' Reports Vol I., page 600.

Vyavasthā. 317. 'Excepting what is gained by valour, the wealth of a wife,* and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father.'† (The rest of the wealth is divisible.)

The meaning of the above text of Náraḍa is, that since the gains of valour, what has been obtained from the parents-in-law, &c. on account of having espoused a wife, the gains of science, and what has been received through affection from a father and others, are indivisible, therefore, setting these four aside, the rest (of wealth) is divisible.†

* What was received at the time of obtaining a wife is here called the 'wealth of a wife'; meaning effects obtained on account of marriage. Excepting these acquisitions let him divide other property; for this phrase is here understood, as expressed in another sentence.—Coeleb. Dā. bhd. p. 111.

Vyavastha. 318. What is given by a paternal grandfather or by a father, as a token of affection, belongs to him who receives it; neither that, nor what is given by a mother, shall be claimed by co-heirs.*—Vyása.

Vyavastha. 319. Clothes, vehicles, ornaments, prepared food, water, women, furniture for repose or for meals, a place of sacrifice, and a field, are not divisible.*

Authority. I. "Clothes, vehicles, ornaments, prepared food, water, women, and furniture for repose or for meals (a) are declared not liable to distribution."*—Manu & Vishnu.

(a) 'Clothes'—personal apparel and raiment intended to be worn at assemblies.—Sri-krishna's commentary on the Dáya-bhága, Sans. p. 145.

'Vehicles'—carriages or horses and the like. Ibidem.


'Water'—That is, water contained in wells or tanks, which has all along belonged to the father and the rest, is not divisible like other property: but must be taken by each co-heir according to his exigency; for the text of Vrihaspati declares: 'the water of wells and tanks must be drawn up and used by turns.' Ibidem.

'Furniture for repose or for meals'—Beds and vessels used for eating or sleeping (or drinking) on and for similar purposes. Ibidem.

'Women'—other than female slaves; since the partition of a female slave is (thus) directed by Vrihaspati—'A single female slave should be employed in labour, in the houses of the several co-heirs successively, &c.'

Authority. II. A place of sacrifice (i) a field, a vehicle, dressed food, water and women, are not divisible among kinsmen, though (transmitted) for a thousand generations.*—Vyása.

(i) 'A place of sacrifice'—The spot, where sacrifices are performed or else an idol: not wealth obtained by sacrificing; for that has been noticed as being the earning of science.*

Vyavastha. 320. A path for cows, the carriage road, clothes or any thing worn on the body, dwelling house, water-pots, ornaments, things not of general use, and channels for draining water are not divisible."

Authority. I. A path for cows, a carriage road, clothes, and any thing which is worn on the body, should not be divided; nor what is requisite for use (u) or intended for arts: so Viśiṇḍapati declares.*

(u) "Requisite for use."—What is fit for each person's use, as books and the like in the study of the Vedas, &c. that shall not be shared by ignorant brethren. So what is adapted to the arts, belongs to the artists; not to persons ignorant of the particular art.*

Vyavastha. 321. Therefore, books must not be taken by the ignorant parences; they belong to those of them who are learned. But the ignorant parencer must receive from the learned parencer some other article, equivalent to the share of the books, to which he is (otherwise) entitled, or else the value itself thereof.—Dā. kra. Sang. p. 81.

For, if it be assumed that the ignorant parencer has no right whatever in the books, then, supposing books only to constitute the common property, when a partition took place, the ignorant parencer would entirely be deprived of his share. This is however inadmissible, since, it would be at variance with the text which declares: "They who are born, they who are yet unbegotten, and they who are actually in the womb, all require the means of support: and the dissipation of their hereditary maintenance is censured."—Ibid.

In like manner, whatever is adapted to the exercise of the arts,

---


† As books, &c.—That is, if there be other effects of equal value with the books, these shall be retained by the learned brethren; and other chattels shall be taken by the illiterate co-heirs, this must be inferred. Else, if the hereditary property consist in books only, the illiterate heirs might be deprived of subsistence, if they had no right of participation.—Śrīkrishṇa's commentary on the Dīya-bhāga. Sav. p. 145.
should belong to those of the heirs who are artists, and not to the unskilled.*

The rule above stated holds equally good in this instance.

**Authority.** II. "No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use (k), nor of women, clothes, and channels for draining water: Prajápati has so ordained."*—Shánkha and Liṅhita.

(k) *‘Things not of general use’*] As books for illiterate persons and so forth.*

Therefore, as much should be taken by each person as will supply his wants. There is not, in this instance, a restriction of equal shares.*

**Vyavastha.** 322. A house, garden or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father’s life-time, remains his indivisible property.*

For his father has assented by not forbidding the construction of it.

**PARTICIPATION OF SONS BEGOTTEN AFTER PARTITION.**

**Vyavastha.** 323. If the father, having separated his sons, and having reserved for himself a share according to law (g), die without being re-united with his sons; then a son, who is born after the partition, shall alone take the father’s wealth; and that only shall be his allotment.†

Thus Goutama.—"A son, begotten after partition (j,) takes exclusively the wealth of his father."†

(g) By the term ‘according to law’ it is thus hinted that, if the father, through ignorance of the law, have made a partition in which he took a very small share for himself, his son, afterwards begotten, shall receive a duc allotment from the brethren.†

(j) I.e., of whom the conception was subsequent to the division of the estate, is a son begotten after partition; being procreated by a person, who is separated (from co-parceners:) for, without conception there is no procreation.†

Vyavastha. 324. Not one only, but even many sons, begotten after a partition, shall take exclusively the paternal wealth.*

"The after-born (t) brothers of those, who have made a partition with their father, whether children of the same mother or of other wives, shall take their father's share."—Vrihaspati.

(t) 'After-born'—that is, begotten by the father after partition.—Sri-krishna's Commentary on the Dāya-bhāga, Sans. p. 147.

 Vyavastha. 325. But, if the father die after re-uniting himself with some of his sons, then the son born after partition shall receive his share from the re-united co-heirs.*

**Authority.** "A son, born after a division, shall alone take the paternal wealth; or he shall participate with such (of the brethren) as are re-united (with the father.)."—Manu and Nārada.

Vyavastha. 326. All (d) the wealth, which is acquired by the father himself (n.), who has made a partition with his sons, goes to the son begotten by him after the partition. Those born before it, are declared to have no right as in the wealth, so in the debts likewise, and in gifts, pledges, and purchases. (p*)—Vrihaspati.

(d) Under the term 'all'—wealth however considerable, which is acquired by the father, goes to the son begotten by him after partition.*

(n) 'Which is acquired by himself.'—it is thus intimated that what is acquired, through personal labour, on separate funds, by the father who united after partition with another son, belongs also to the son begotten after partition, and not to the re-united parceners. Sri-krishna's Commentary on the Dāya-bhāga. Sans. p. 148.

**Authority.** "They have no claims on each other, except for acts of mourning and libations of water."—Vrihaspati.

By specifying 'acts of mourning and libations of water' only, the author excludes the pretensions to a participation in wealth.*

---

The meaning is, that, as the son begotten after partition is to receive the property of his father, acquired after partition, so also he is to liquidate his father's debts contracted after partition. In like manner, whatever the father had promised to give, whatever he had deposited, mortgaged, or whatever price he did not pay after purchasing (a thing,) all these should be performed by him only.—Sri-krishna's Commentary on the Dāya-bhāga. Sans. p. 149.

Vyavastha. 327. If the sons were separated (from the father) while his wife was pregnant but not known to be so, the son, who is afterwards born (of that pregnancy,) shall receive his share from his brothers*(b.)

(b) ‘Shall receive his share from his brothers’—This must be understood where the father remains separate, having reserved for himself what ought to be reserved by him, and having given the residue to his sons.*

But if the father be dead, then the shares of him and of the brethren must be thrown together, and divided, according to law, by all the brothers.*

Vyavastha. 328. If a share were previously set apart for the child in the womb, the wife's pregnancy being known, all shall participate in the father's allotment (after his demise,) provided there be no son begotten after the partition.*

Vyavastha. 329. If a man, having made a partition with his sons, and again residing with any one of them as re-united parcer, die after begetting another son, this last born child shall be sole heir of his estate.—Coleb. Dig. Vol. III. p. 553.

According to the text of Manu and Nārada above cited.

Vishnu and Jáonyavalkya have directed, that an allotment shall be received (by the son born after partition) from his brothers; Manu, Vrihaspati, and Goutama, have ordained, that the son born after par-

tion shall not receive it from them. On this seeming contradiction, the author of the Prakāsha, Chandeshwara, Misra, and Shāla-pāgi remark: 'if the pregnancy was not certainly known at the time of the distribution, in that case, (should a son, who was then in the womb, be born after it,) he shall obtain his share from the brothers; but a son begotten subsequently to the partition shall only obtain the estate of his father.' But if the pregnancy be manifest, no partition can be made; so the author of the Prakāsha, and Chandeshwara. Yet, if the co-heirs cannot wait so long a time, one share ought to be set apart for the child, as directed by Vashishtha (in the case of pregnant widows, ante p. 3.) But should a daughter be produced from that conception, the share (which had been set apart) shall be subsequently distributed among those (brothers.*)

Vyavastha. 330. But, if the father himself, though apprised of the pregnancy, have given shares to his sons, in virtue of his power as owner; the child in the womb has no right to participate, since their property in those shares is complete: he has a right only to the father's allotment; and, if there be a son begotten after the partition, he is entitled to partake equally with him.*

This is applicable only to the case of wealth acquired by the father.*

Vyavastha. 331. But, if property inherited from the grandfather, as land or the like (m,) had been divided, he may take a share of such property from his brothers.*

For partition of it is authorized (only) when the mother becomes incapable of bearing more children.*

Authority. "Sons, with whom the father has made a partition, should give a share to the son born after the distribution."*—Vishnu.

Since it disagrees with the ordinance (of Manu and Nārada) that

he shall alone take the paternal wealth, it must relate to the hereditary property, for the reason above mentioned.*

(m) The term 'land or the like', comprehends corroyd and bipeds. —Sri-krishṇa’s Commentary on the Dāya-bhāga. Sans. p. 149.

Vyavastha. 332. Consequently since the partition is illegal, having been made in other circumstances, it ought to be annulled.—Sri-krishṇa’s Commentary on the Dāya-bhāga, Sans. p. 148.

A question may be here proposed for disquisition: if a man surviving his resignation of worldly concerns, and urged by his fate, cohabit with his wife and oeget a son after his property has been divided among his children, what would be the consequence? It is answered: the father’s property being divested by abdication, which is a virtual gift, and the property being vested in his sons without any effort on their part, how can a child born afterwards have any claim thereon, whether it be or be not divided, since it does not belong to his father.—Cobel. Dig. Vol. III. p. 52.

Should the mother be pregnant, but not known to be so, at the time of partition made by brothers after the death of their father, and should a son be subsequently born of that pregnancy, he shall take his share from his brothers.

But if the father die while the mother was pregnant, and known to be so, and then if the brothers divide the estate without waiting for the birth of the child, and without keeping a share for it, such partition is illegal, and the issue of that pregnancy, if a son, shall take his share by having the partition cancelled.

*‘For the reason above mentioned’—That which was stated; because the distribution is authorized when the mother becomes incapable, &c. Therefore whether pregnancy were known or not, the partition being illegal, which has been made, of the grandfather’s estate, without the mother’s being incapable of bearing children, it ought to be annulled; and the two cited passages will relate to the distribution of such property: but the preceding texts of Mans and the rest regard the father’s own acquired wealth. The contrary must not be supposed.—Sri-krishṇa’s Commentary on the Dāya-bhāga, Sans, p. 149.
Vyavastha: 333. The son born after partition shall, however, receive a share of the then existing estate, exclusive of the income and expenditure.*

Authority. "When the sons have been separated, one, afterwards born of a woman equal in class, shares in the distribution. His allotment must positively be made, out of the visible estate corrected (y) for income and expenditure.†—Jântyavalkya.

(y) "Must positively"]—The particle 'Vâ' is affirmative; and what has been consumed, is consequently excepted.—Sri-krishâ's commentary on the Dâya-bhâga. Sans. p. 149.

PARTITION OF PROPERTY OF RE-UNITED PARCEnes.

Vyavastha: 334. If persons once divided and living again together (a) make a second partition, the shares must, in that case, be equal (a:) there is not in this instance any right of primogeniture.‡—Manu and Vishnu.

(a) "The shares in that case must be equal"—This supposes reunion of brothers, belonging to the same tribe; for the text is intended only to forbid an elder brother's superior portion as before allotted to him.†

Thus Vrihaspati: 'Among brethren who being once separated, again live together through mutual affection, there is no right of primogeniture, when partition is again made.'§

Not only brothers, but also the father and son, paternal uncle and nephew, and other parceners can be mutually re-united.¶—See ante, pp. 219, 220.

† That is, without including the subsequent increase, nor what has been consumed by the brethren.—Coleb. Dig. Vol. III. p. 436.
¶ How re-union is effected is stated at page 219. q. v.
From the term 'there is no right of primogeniture', it is deducible that, in the partition after re-union, as the eldest brother has no right to a deduction in addition to his share, so a father has no title to the double share, nor is any one else entitled to a larger portion: consequently—

Vyavastha. 335. The rule of distribution after re-union must conform with the original allotment of shares.*

Vyavastha. 336. If a person die leaving no relative nearer than his re-united parcener, then the latter succeeds to his property in preference to the unre-united parceners though in the same degree of affinity.†

Because, here the claimants being in an equal degree of affinity, the re-united parcener is held in preference to those not re-united, according to the text "a re-united parcener is heir of a re-united one."

If a re-united parcener die possessed of any undivided property, the right thereto devolves on his re-united parcener only.

For the text:—'a re-united parcener is heir of a re-united one' shows that the brethren who have renewed co-parcenery, exclusively inherit the wealth of a re-united parcener.—Coleb. Dig. Vol. III. p. 554.

Vyavastha. 337. Other particular rules (i) which have been set forth under the head of partition among brothers, must be observed in this case also.—Coleb. Dú. bhd. p. 228.

(i) 'Other particular rules'—That is, wealth acquired without use of the joint stock, belongs to the acquirer exclusively, and is not shared by the rest: but, in the instance of the gains of science, such of the brethren as are equally or more learned participate; and in the case

* The meaning of the phrase:—"the distribution must conform with the original allotment of shares or their allotments follow the proportions before ordained,"—is, that the division shall be made in that proportion and mode which were observed in the first instance; for this is no less a partition (than the former distribution was.)—Coleb, Dig. Vol. III. p. 550.

So the eldest brother shall not get a deduction (in excess of his equal share) nor shall the father have the double share, if he did not get the same in the first partition.


of the wealth acquired with the use of the joint stock, all partake. These and other special rules, set forth under the head of partition among brethren, must be observed also in the case of partition after reunion.*—Sri-krishna's Commentary on the Dōya-bhāga, Sans. p. 228.

As to Vṛihaspati’s text—‘But if one of the re-united brethren acquire wealth by learning or valour, or the like, two shares of it must be given to him (on a second partition,) and the rest shall have each one share:’ it must be applicable to the same case in which Jīmūta-vāhana and the rest have ordained a double share to be given to the acquirer. (See ante, p. 468, et sequ.) Jagan-nātha, in interpreting this text, says: “But according to Jīmūta-vāhana and others, the acquirer shall have a double allotment, and the rest shall have each one share of wealth any how gained with the supplies from the joint stock and so forth; if the learning were acquired after a maintenance provided out of the common stock, all the parceners shall have the shares ordained for them, although the joint property were not employed during the acquisition of the wealth; but even though the common funds of support be not used during the acquisition of science, nor during that of wealth, they who are equal or superior in learning participate; if the money be earned without use of joint property, through agriculture or the like, by the labour of a body nourished on the joint funds or support, it nevertheless becomes the several property of the acquirer, as before explained.” (Coleb. Dig. Vol. III. p. 551.) One part of this is not, however, in conformity with their opinion; that is to say, they do not maintain that receipt of maintenance from the family is equivalent to the use of the common stock. So according to their opinion, wealth gained through learning acquired by receiving maintenance from the family is not divisible among the less learned or unlearned parceners.

* These have been partly stated in another place by Jīmūta-vāhana himself, thus:

“Moreover the text of Kāttāyana (is similarly founded on reason.) When brethren separated in regard to the patrimony, and subsequently living anew together, make a (second) partition, he from whom an acquisition has proceeded, shall again take a double share.” This is expounded by Śrīkara as signifying that ‘a re-united parcener, who has made an acquisition with the use of the joint stock, shall have two shares; and the rest one splice.’ Hence it appears to be the opinion both of the saint and commentator, that wealth gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a re-union of parceners; and such wealth is not joint property.”—Dāf. bhā., p. 114.
The particular rules that respect the right of associated and unassociated parceners have also been set forth in the sections treating of inheritance of brothers and the rest.—See ante, page 204 et seq.

*Legal opinions delivered in, and admitted by, several Courts of Judicature, and examined and approved of by Sir William Macnaghten.*

Q. I. There were three uterine brothers, who during the life-time of their father caused him to make a partition of his entire estate among them, and from that time one brother lived apart, and the other two lived together as an united family: subsequently to the father's death, one of the united brothers died, leaving no male issue, and his exequial rites were performed by his united brother. In this case, are the surviving brothers equally entitled to his property; or is the brother who lived in a state of union with the deceased alone entitled to the succession, to the exclusion of the other brother who lived separated?

R. I. The brothers having separated, if one of them die without heirs,* his estate shall be equally shared by his brothers, provided there be no particular evidence of a re-union having taken place between the deceased and the brother with whom he resided till his death. The doctrines for this are laid down in the *Dāya-bhāga*, and other authorities.

Q. 2. If there be evidence of an express and distinct re-union, and one of the re-united brothers die, is the associated brother alone entitled to his estate, or will the unassociated brother share with him?

R. 2. Under the circumstances above stated, the associated brother is alone entitled to the succession, to the entire exclusion of the unassociated brother.

*Authorities—*

*Jānyavalkya:*—"A re-united (brother) should keep the share of his re-united co-heir, (who is deceased.)"

Zillah Hoogly.—Maen. II. L. Vol. II. Ch. 5, Casq. 24 (pp. 173, 174.)

---

* Here by the mention of ‘without heirs,’ it must be understood, that the person died leaving no heir down to the mother.
of the wealth acquired with the use of the joint stock, all partake. These and other special rules, set forth under the head of partition among brethren, must be observed also in the case of partition after re-
union.*—Śrī-krishṇa’s Commentary on the Dāya-bhāga, Sans. p. 228.

As to Vṛhāśpati’s text—‘But if one of the re-united brethren acquire wealth by learning or valour, or the like, two shares of it must be given to him (on a second partition,) and the rest shall have each one share:’ it must be applicable to the same case in which Jīmūta-vāhana and the rest have ordained a double share to be given to the acquirer. (See ante, p. 468, et sequ.) Jagan-nātha, in interpreting this text, says: “But according to Jīmūta-vāhana and others, the acquirer shall have a double allotment, and the rest shall have each one share of wealth any how gained with the supplies from the joint stock and so forth; if the learning were acquired after a mainte-
nance provided out of the common stock, all the parceners shall have the shares ordained for them, although the joint property were not employed during the acquisition of the wealth; but even though the common funds of support be not used during the acquisition of science, nor during that of wealth, they who are equal or superior in learning participate; if the money be earned without use of joint property, through agriculture or the like, by the labour of a body nourished on the joint funds or support, it nevertheless becomes the several property of the acquirer, as before explained.” (Coleb. Dig. Vol. III. p. 551.) One part of this is not, however, in conformity with their opinion; that is to say, they do not maintain that receipt of maintenance from the family is equivalent to the use of the com-
mon stock. So according to their opinion, wealth gained through learning acquired by receiving maintenance from the family is not divisible among the less learned or unlearned parceners.

* These have been partly stated in another place by Jīmūta-vāhana himself, thus: “Moreover the text of Kātyāyana (is similarly founded on reason.) When brethren sepa-
rated in regard to the patrimony, and subsequently living anew together, makes (second) partition, he from whom an acquisition has proceeded, shall again take a double share.” This is expounded by Śrīkara as signifying that ‘a re-united parcener, who has made an acquisition with the use of the joint stock, shall have two shares; and the rest one share.’ Hence it appears to be the opinion both of the saint and commentator, that wealth gained with no use of the common funds, appertains exclusively to the ac-
quirer, even in the instance of a re-union of parceners; and such wealth is not joint property.”—Dāf. bhd. p. 114.
e particular rules that respect the right of associated and unasso-
l parcers have also been set forth in the sections treating of
ance of brothers and the rest.—See ante, page 204 et seque.

Legal opinions delivered in, and admitted by, several Courts of
Judicature, and examined and approved of by
Sir William Macnaghten.

I. There were three uterine brothers, who during the life-time
sir father caused him to make a partition of his entire estate
g them, and from that time one brother lived apart, and the other
lived together as an united family: subsequently to the father's
, one of the united brothers died, leaving no male issue, and his
d rites were performed by his united brother. In this case, are
ivving brothers equally entitled to his property; or is the bro-
who lived in a state of union with the deceased alone entitled to
cession, to the exclusion of the other brother who lived
ated?

I. The brothers having separated, if one of them die without
his estate shall be equally shared by his brothers, provided
be no particular evidence of a re-union having taken place be-
the deceased and the brother with whom he resided till his death.
ctorines for this are laid down in the Dāya-bhāga, and other
eties.

Q. 2. If there be evidence of an express and dis-
tinct re-union, and one of the re-united brothers die,
is the associated brother alone entitled to his estate,
or will the unassociated brother share with him?

2. Under the circumstances above stated, the associated bro-
s alone entitled to the succession, to the entire exclusion of the
ociated brother.

Authorities—

SNYAVALKYA:—"A re-united (brother) should keep the share of
united co-heir, (who is deceased.")

lah Hoogly.—Macn. II. L. Vol. II. Ch. 5, Cas. 24 (pp. 173,174.)

Here by the mention of 'without heirs,' it must be understood, that the person
ving no heir down to the mother.

68
Vyavastha. 340. Not only a brother, but on his death his male issue as far as the great grandson, is also entitled to share the property concealed.

Authority. What has been concealed by one of the co-heirs, and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brethren.†—Kātyāyana.

The meaning of the text is, that in default of a co-heir, let his male issue as far as the great-grandson (in the male line) equally divide the concealed property with the other sharers, (i.e.) the brothers of the deceased.—Śrī-kṛṣṇa's Commentary on the Dāya-bhāga. Sans. p. 247.

Vyavastha. 341. Effects which have been taken by a kinsman, he shall not be compelled by violence to restore;‡ and the consumption of unseparated kinsmen, they shall not be required to make good.—Kātyāyana.

By gentle means, and not by violence;‡ a kinsman shall be made to restore the effects taken by him. But what has been consumed by a co-heir during co-parcenary over and above his due portion, he shall not be required to make good.

ON THE ASCERTAINMENT OF A DUBIOUS PARTITION.

Vyavastha. 342. If a doubt arise regarding the fact of a partition having been made, it should be ascertained by the evidence of kinsmen, relatives, or other witnesses, or by written proof.

* Partition being suggested as a matter of course, it is intimated by the enunciation of this text, that the crime of theft is not committed by concealing effects held in co-parcenary. So Halāyudha, Viśvavṛtta, Chandeshwara, Jīmikā-udānā, Raghunandana, and the rest.—Coleb, Dig. Vol. III. p. 397. See Coleb. Dāś. bhā. pp. 231—235.
‡ It may be asked, if he restore them not after friendly expostulation or the like, may the co-heir use compulsion or not? It should not be argued from the words of the legislature “let not a co-heir use violence to make him restore,” that it shall not (even then) be used.—Coleb. Dig. Vol. III. p. 402
**VYAVASTHA-DARPANA.**

**Authority.** I. When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof (a); or by separate possession of house or field.*—JÁNYAVALKYA.

(a) In the first place *kinsmen*, or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term *bandhu*. In default of these, strangers may be witnesses: for, if they were equally admissible, the "specific mention of 'kinsmen' and 'relatives' would be unmeaning; since they are comprehended under the term 'witnesses.' Hence SHANKHA says: 'Should a doubt arise on the subject of a partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race.'—'Relations sprung from the same race'—are kinsmen. If the matter be not known to them, the family or relatives may give evidence: but not a stranger. But if these also be uninformed, any other person may be a witness. Accordingly, kinsmen are stated by NÁRADA as the chief evidence.*

Next the proof is by written evidence: but written proof is superior to oral testimony: being so declared (by a text:—"a writing is better than oral evidence.")*

II. If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of distribution,† or by the separate transaction of affairs.*—NÁRADA.

**Vyavastha.** 343. The fact of partition should also be ascertained by separate transaction of affairs or separate property or possession.

---


It should be here remarked, that, the king and his officers being superior in power to all others, an instrument executed in their presence and attested by them is most authentic.—Coleb. Dig. Vol. III. p. 416.

† VEMAŚAṬA explains the nature of a written record of partition thus: 'that record of partition which brothers or other co-heirs execute after making a just division by mutual consent, is called the written memorial of the distribution.'—Coleb. Dig. Vol. III. pp. 408.
Authority.  I. 'Gift and acceptance of gift, cattle, grain, house, land, and attendants, must be considered as distinct among separated brethren, and also diet, religious duties, income, and expenditure. Separated, not unseparated, brethren may reciprocally bear testimony, become securities, bestow gifts and accept presents. Those, by whom such matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence. The religious duty of unseparated brethren is single. When partition, indeed, has been made, religious duties become separate for each of them.'—NÁRADA.

Authority. II. A violent crime, immovable property, deposit, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be neither writing nor witnesses. The exertion of force, a blow, or the plunder may be evidence of a violent crime; possession of the land may be proof of property; and separate wealth is an argument of partition. They, who have their income, expenditure and wealth, distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate.†—(Véihaspáti.)

One brother gives and another accepts, or they have separate houses and lands, or their income and expenditure (of wealth) and abodes are separate; or, when loans or other affairs are transacted by one, another is made witness to it, or becomes surety; or they have mutual transactions of money-lending or the like; or one, having bought certain goods from another person, sells it for traffic to his brother; in these and similar instances, since any such act can only take place

---

* The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments and other religious duties performed separately from them, are pronounced by NÁRADA to be tokens of partition.—(Múdakhará p. 376.) The five great sacraments are as follows.—"Teaching and studying the scripture is the sacrament of the Vedas; offering cakes and water, the sacrament of the manes; an obligation to fire, the sacrament of the deities; giving rice and other food to living creatures, the sacrament of spirits; receiving guests with honour, the sacrament of men.—Manu, Ch. III, p. 70, v.

† Those (co-heirs) whose income, expenses, and wealth are separate, who severally acquire property, and make distinct gifts and separate baulments of their effects, are dis-united. Again they who mutually lend money at interest, (who reciprocally give or receive loans,) are dis-united; all these relates to wealth inherited from the father or other ancestor.—Coleb. Dig. Vol. III. p. 428.
among divided brethren, a presumption of partition is deduced from it by the intelligent. It is not to be concluded from the use of the plural number in the phrase "by whom such matters are transacted," that the concurrence of all those circumstances is required. For these texts are founded on reason; and the reason is equally applicable in every several instance.—Coleb. Dá. bhd. pp. 238, 239.

Vyavastha. 344. By saying, 'if there be neither writing nor witnesses,' it is intimated that presumptive proof is to be admitted only in default of written and oral evidence.—Dá. bhd. p. 239.

Jagan-nátha considers the distinct preparation of food after an agreement purporting separation is the sufficient proof of separation. Some of his observations are as follows:—"When it is observed that undivided co-heirs having large families, and perceiving inconvenience in preparing their food together, dress their victuals apart, that separate cookery is merely intended for their own convenience: but preparation of grain for oblations to deities, for the entertainment of guests, (and) for the support of servants, is not in that case separate. In fact, they only are divided co-heirs who dress victuals separately, (and without consulting any other,) for all purposes common (to undivided co-heirs,) for their families, connections, guests, and the like: they only ought to perform separate acts of religion. Hence, although the remainder of an estate may be undivided, it is not considered as proof that partition has not taken place; for it frequently happens that dis-united co-heirs have joint property."

"What then is the meaning of the term 'partition'? This question might be proposed, and is thus answered; for it does mean division of the patrimony, since it would follow, that no partition could take place among those who are destitute of inherited wealth. Does it not mean the division of any property whatsoever? Accordingly Jáñyaválka has said: 'One who is able to earn a livelihood, and claims not a share of the joint property, may be dis-united from the family, on giving him some trifle, as a consideration to prevent future strife:' and there can be no necessity of separate acts of religion without partition. (It bears) not (that meaning;) for it might be supposed that no separation could take place between those who
have no property whatsoever. Consequently, the meaning of partition is separation in respect of food prepared for the entertainment of guests and relatives, and for other purposes which are common (among united co-heirs.) How then can separation take place between those who are not visited by relatives or guests?"

**Vyavastha**. 345. "Distinct preparation of food, after an agreement in these words: 'hence forward we are dis-united,' is partition."—Coleb. Dig. Vol. III. pp. 420, 421.

Afterwards their acts of religion, and wealth, or the like, received on some consideration relative to the father, are separate; before that agreement they are single.—Ibid.

In like manner, the question may be determined by their annual obsequies (for a deceased ancestor) and by their (separate) worship of Lakshmi and other deities, and the like.—Ibid. p. 429.

After this the author quotes the latter paragraph of the Dāya-bhāga already cited: viz.—"In these and similar instances," &c. ante, pp. 242, 243.

_Rāj-kishor Roy and four others (sons of Kāli-charan Roy,)_—
Appellants, versus Widow of Sānta Dās (son of Joy-krishna Roy,)—Respondent.

**Cases**

Cases bearing on the vyavastha No. 348.

I, Kāli-charan, Joy-krishna, and Shobha-rām, were brothers. Shobha-rām died leaving a son, Rādhā-nāth. Then died Joy-krishna, leaving a son Sānta Dās. Then died Kāli-charan, leaving five sons Rāj-kishor Roy, &c. the original defendants in suit. Kāli-charan during his life conducted a banking house, which after his death was carried on by his eldest son Rāj-kishor, in concert with the other brothers. Sānta Dās, the cousin of these, (son of Joy-krishna,) was occasionally employed in transacting business for Rāj-kishor, and he, as well as his father, received money for his private expenses from Kāli-charan and Rāj-kishor; but does not appear to have received any specific share of the profits in trade; or to have been present at the balancing of the accounts, or to have been made acquainted with the profit or loss. The account books contain no mention of the parties, except that in the bahī khasrā, or day book, disbursements for private expenses are entered, which include the monthly expenses of Sānta Dās and Rādhā-nāth; the latter of whom was at the time
engaged in a separate business, independent of his cousins. The three brothers, Káli-charaṇ, Joy-krishṇa and Shobha-ráma, all messed apart, as did also their respective heirs; but Sánta Dáś and Rádhá-náth continued to receive money for their private expenses from Ráj-kishor, for more than twenty years after the decease of their fathers; until disputes arising, they each claimed a third share of the trade which had been managed by Káli-charaṇ and Ráj-kishor, together with a third of the house-hold effects, money and jewels, possessed by Ráj-kishor, alleging, that these were held by him and his father as joint and common property of the family; and resting their claim on the circumstance of no separation of property having taken place between them or their fathers and Ráj-kishor or his father, and on their having continued to receive money for their expenses from the common funds managed by Ráj-kishor and his brothers. That Joy-krishṇa and Shobha-ráma, or their sons Sánta Dáś and Rádhá-náth, had any co-parcenery with Káli-charaṇ or his son, or ever possessed any property jointly with them, was denied by Ráj-kishor and his brothers; who pleaded, that the property, in their possession, was the produce of the exclusive and separate industry of their father and themselves. These being the circumstances, the Sudder Dewanny Adawlut consulted their pândits, whether, according to the Hindu law of succession and partnership, the claim of Sánta Dáś, the original plaintiff in this suit against Ráj-kishor Roy and his brothers, was, or was not, maintainable; to which the pândits replied, in substance, that, under the circumstances stated, the claimant having messed apart from the defendants, and having received maintenance, but no share of the profits in trade, and never having advanced a claim till now, must, in law, be deemed separate as respected family partnership, though no written declaration of separation should have been made; and that the claim in the present suit could not be maintained.

In conformity with this opinion, the Sudder Dewanny Adawlut (present P. Speke and W. Cowper,) gave judgment against the claim. The 26th of October, 1796.—S. D. A. R. Vol. I. pp. 13, 14.

III. The mere circumstance that one of several brothers of a Hindu family occupied a separate dwelling house, does not rebute the presumption of the family being joint, if it appear that they dealt with the family property as joint property.—Musummât Bilâs Kunwar versus Bâbâ Bhawânî-bakhsh Singh and others.—H. C. A. 21st of July 1863. Marshall’s Reports Vol. I. p. 641.

ON THE ALLOTMENT OF A SHARE TO A CO-PARCENER APPEARING AFTER PARTITION.

Vyavastha. 315. Whether partition have or have not been made, whenever an heir appears, he shall receive a share of whatever common property there is. Be it debt or a writing, or house, or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent.—Vrihaspati.—See Dá. bhá. p. 140.

Vyavastha. 346. Not only he, but his descendants also shall take his share.

There is however a distinction in the participation of descendants:

Vyavastha. 347. It is a settled point, that one who travelled into a foreign country,* at a period when no partition had taken place, and returned after a long lapse of time, as well as his descendants, as far as the seventh in degree, after they shall have made themselves recognized by the inhabitants, whose family from generation to generation resided in that country, and neighbours, shall obtain a lawful share of the heritable wealth.—See Dá. kra. sang. p. 117.

Authority. If a man leave the common family and reside in another country,* his share must, no doubt, be given to his male descendants when they return. Be the descendant third,

* A different country is thus defined by Vrihat Manu: ‘Where language differs or a mountain or great river intervenes, it is called a different country. However near a country which has a different name and is parted by a river, is called a different country by the self-existent himself; and so is the place whence intelligence cannot be received in
or fifth, or even seventh (a) in degree, he shall receive his hereditary allotment, on proof of his birth and name. To the lineal descendants, when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen.—Vrīhaspāti. See Dā. bhā. pp. 140, 141.

(a) Or even seventh.] The particle or (vā) connects this with other degrees not mentioned but included within the seventh. Therefore, descendants as far as the seventh in degree, returning from a foreign country, participate: not so the eighth or other remoter descendants. Accordingly, the text, which expresses, that "The right to participation ceases with the seventh person," relates to this subject.—Sūr-krishna’s Commentary on the Dāya-bhāga. Sans. p. 150.

**Vyavastha.** 348. But descendants only, as far as the fourth degree, of one who had remained all along in his own country, are entitled to share his wealth.—Dā. kra. sang. p. 118.

**Reason & Authority.** For it has been formerly declared, that the fifth in descent and the rest confer no benefits on a deceased owner; since they are not competent to present funeral oblations to him at solemn obsequies.—Ibid. p. 118.

The law may be thus briefly recapitulated:—

**Vyavastha.** 349. A son, a grandson, and a great-grandson succeed to the estate of a father, of a paternal grandfather, and of a paternal great-grandfather, on their decease; if co-heirs, residing in their own country, take not their

ten nights. Vrīhaspāti says: 'some call a space of sixty yojanas or jojanas a distinct country; some the space of forty jojanas, others again the space of thirty jojanas.' The discrepancies regarding language, &c., as in the text of the two sages, are thus reconciled: if three circumstances (of difference) exist, the country is distinct (even) within thirty jojanas; if two exist it is a different country beyond thirty and (even) within forty jojanas, and where but one exists, it is a different country beyond forty jojanas and (even) within sixty. A region beyond sixty jojanas is a foreign country, though it may not have a different language, or may not be intervened by a mountain or great river. Thus Shuddhi-Chintā-mañi. See Udā. ku-tattwa.
shares during three generations, the right is lost to their descendants; but it is lost to the posterity of co-heirs residing in a foreign country, if the seventh in descent claim not (the share.) Coleb. Dig. Vol. III. p. 449.

"Among unseparated kinsmen, let not one restore what has been expended. Or partition should take place of the visible wealth, corrected for income and expenditure." The particle or (vá) in this text of Nárada is affirmative: consequently,—

**Vyāvasthā.** 350. Having compared the amount of the wealth which had accumulated at a time when no partition had taken place, with the amount expended, a division should be made of the balance actually remaining. *Dá. kra. sang.* p. 112.
CHAPTER VI.
ON THE EXTENT OF A PROPRIETOR'S POWER.

SECTION I.—IN DIVIDED OR SOLE PROPERTY.

In partition the power of a father or proprietor is still the same as it was before, no change having taken place in that branch of the law. But the doctrine regarding his power of making a gift or other disposition of real property ancestral or self-acquired and also ancestral personal property if the estate consisted of that alone, has, of late, undergone a great change. For, anciently the doctrine of the law was, that a father could not make a gift or other disposition of such property without the consent of his sons, as is clear from the following texts:

"The ownership of father and son is the same in land which was acquired by his (the father's) father, or in a corodry, or in chattels."—Jñānyāvalkya.

"The father is master of the gems, pearls, and corals, and of all (other movable property,) but neither the father nor the grandfather is so of the whole immovable estate."†—Jñānyāvalkya.

"Though immovables and bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons."‡ They, who are born, and they who are yet unbegotten, and they who are actually in the womb, require the means of support:

---

* The extent of his power in this respect will be known on perusal of the section treating of partition by a father. *Ante*, pp. 413—451, and the case of Bhawani-churn Banerjee versus the heirs of Ram-kanta Banerjee. *Ante*, pp. 436—446.

† Since the grandfather is (here) mentioned, the text must relate to his effects. By again saying 'all' after specifying "gems, pearls. &c." it is shown, that the father has authority to make a gift or any similar disposition of all effects other than land, &c. but not of immovables, a corodry, and chattels (i.e. slaves.)—Dāta. dhd. p. 29.

‡ The concurrence of all the sons (and fatherless grandsons) in the disposition of real property is however dispensed with in the case where they happen to be all minors (at the time) and incapable of giving their consent to the disposition, and a calamity affecting the family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable. For Veśānāpati ordains: "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes.—See *Mitākṣara*, p. 367, and Strange's *H. L.*, Vol. I. p. 19.
no gift or sale should, therefore, be made."—Vyása as cited in the Mitákhará and other compilations.

The reason for prohibiting the disposition of real property was, that the family may not suffer for want of maintenance, since immovables and similar possessions are means of supporting the family, and the maintenance of the family is an indispensable obligation, and the dissipation of the means of subsistence is censured. Thus Manu:—

"The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore let (the master of a family) carefully maintain them."

"He who bestows gifts (on strangers with a view to worldly fame) while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit." Vyása:—"They who are born, they who are (yet) unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured."

The prohibition as to gifts is declared by Jáñya-valkya to be made lest by alienation the family may suffer for want of maintenance.

Accordingly it was wisely ordained that a man could not make a gift or other disposition, if by such disposition his family may suffer for want of sufficient maintenance, but he could alienate what remained after providing sufficiently for the family. Thus—

Vrihaspati:—"A man may give what remains after food and clothing of his family: the giver of more may taste honey at first, but shall afterwards find it poison."

Kátyáyana:—"Except his whole estate and his dwelling house what remains after food and clothing of his family a man may give away, whatever it be, (whether fixed or movable;) otherwise it may not be given."

Jáñya-valkya:—"Except his wife and issue, a man may give away (his wealth) which does not affect the maintenance of his family: he cannot give the whole wealth if there be his issue; also what was promised to a stranger."

Jiméta-váhana too, in expounding the text of Jáñya-valkya already cited (p. 549,) after remarking, "Since here also it is said 'the whole'
has laid down—“this prohibition forbids the gift or other alienation of the whole. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word ‘whole’ would be unmeaning (if the gift of even a small part were forbidden.)”

These salutary and prudent precepts have of late been rendered totally inoperative and ineffectual. It was already the Bengal doctrine that a proprietor was at liberty to make a gift or other disposition of his self-acquired or recovered property, real as well as personal; and that he could sell the whole of the immovable and other property, if the family could not otherwise be supported; but that for any other cause he had no power to dispose of the whole of the ancestral real property, nor even that movable property which alone formed the ancestral estate.—See ante, p. 436.

But of late the famous observation of Jímáta-váhana, which furnished a fine ground to subtle lawyers to baffle the efficacy of the ordinances enunciated by the texts above cited, was taken advantage of and followed by Jagan-nátha and the rest. That observation is as follows:—

“But the texts of Vyása exhibiting a prohibition, are intended to show a moral offence: since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer. So likewise other texts (as this ‘though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons,’) must be interpreted in the same manner. For here the words “should be made” must necessarily be understood. Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.”*

It was on the ground and plea of this passage that gift or other disposition of the whole of ancestral property, though illegal and sinful, was declared valid by some pandits who flourished at that time, and their opinion was followed by the then dispensers of justice who had

* ‘A fact cannot be altered by a hundred texts!’—If a bráhmaṇa be slain, the precept “slay not a bráhmaṇa” does not annul the murder, nor does it render the killing of a bráhmaṇa impossible. What then? it declares the sin. Rasika-vaññana on Dharma-bhāṣya, p. 32.
no means of acting independantly of the pandits. Thus the doctrine of 'factum valet quod fieri non debuit' was introduced into our country with regard to alienation by males of any description of property, whether ancestral or acquired, real or personal; and it has been prevailing since. So now the settled and prevalent rule is, that—

351. A man, who has sons, can give, sell, or pledge, without their consent, his possessions, whether inherited or acquired, real or personal, and that, without the consent of the sons, he can, by will, prevent, alter, or affect their succession to such property.*

Authority. I. The father alone has absolute property; and equal dominion is affirmed to show that no unequal partition can be made in this case. Consequently, a gift made by the owner is valid, for he is not insane nor otherwise incapacitated. In like manner, by declaring that "the father has no power" &c., he is prevented from making an unequal division without a sufficient cause. Again: donation and sale are forbidden, to show the immorality of the act, not to annul the gift or alienation; and that is evident on the exposition of Jimūta-vāhana and the rest.—Coleb. Dig. Vol. III. pp. 36,37.

II. If any father, infringing the law, absolutely give away the whole or part of the immovable property acquired by himself, or inherited from his own father, that gift is valid, provided he be not impelled by lust, (or) wrath, (nor act with) guile, or the like. However, he commits the moral offence of violating the law. More on this subject will be subsequently delivered with the opinion of Jimūta-vāhana and the rest.—Ibid. p. 37.

* The only doctrine that can be held by the Sudder Dewanny Adawlut, consistently with the decisions of the Court, and with the customs and usages of the people, is, that a Hindu, who has sons, can sell, give, or pledge, without their consent, immovable ancestral property situate in the province of Bengal; and that, without the consent of the sons, he can, by will, prevent, alter, or affect their succession to such property." Opinion of the late Sudder Dewanny Adawlut given on the requisition of the late Supreme Court.—See Clarke's Notes of the Decided Cases. pp. 104,105.

A Hindu in Bengal may leave by will or bestow by deed of gift, his possessions, whether inherited or acquired; and the gift or the legacy whether to a son or to a stranger, will hold, however reprehensible it may be as a breach of an injunction and precept. Colebrooke's opinion. Ibid, p. III. Vide Strange's Hindu law. Vol. II. p. 426.
III. If the whole immovable property be given away, the consequent distress of the family, through want of subsistence, is the sole cause of moral guilt; the gift or alienation is not annulled; for it is made by an owner, who is neither insane nor otherwise incapacitated. The two texts (of Vyāsa) cited by Jmōta-vāhana are also intended to show the immorality of the act, not to annul the sale or other alienation.—_Ibid._ p. 39.

IV. The gift of wealth inherited from a grandfather not being included under the title of Void gifts, the text of Jānnya-valkya (‘the father is master of gems,’ &c.) is considered as a moral prohibition of such gifts.—_Ibid._ Vol. II. p. 118.

V. No one has expressly said, that the immovable patrimony, given without the assent of sons and the rest, is not a valid gift.—_Ibid._ p. 159.

VI. The gift of a man’s whole estate is valid, for it is made by the owner: but the donor commits a moral offence, because he observes not the prohibition.—The _Smriti-sūra._—_Ibid._ p. 118.

**Remark.** Five cases have been cited by Sir William Macnaghten in the first Chapter of his book on Hindu law, in the first, second, and third of which the doctrine in question was held and inculcated. The decisions in those cases are the leading ones on the subject in question. They are therefore briefly noticed here with the able remarks thereon by the learned gentleman aforesaid and Sir Thomas Strange.

**Cases bearing on the vyavastha No. 522.**

I. The first case (on record) is that of Rasik-lāl Dutt, and Hari-lāl Dutt, executors of the will of Madan-mohan Dutt versus Choitaya-charan Dutt. This case was taken by Sir William Macnaghten from the Elements of Hindu law by Sir Thomas Strange, who states that the case was decided about the year 1789; that the testator, a Hindu, the father of four sons, and possessed of property of both descriptions, ancestral and self-acquired, having provided for his eldest son by appointment, and advanced to the three younger ones in his life-time the means of their establishment, thought it proper to leave the whole of what he possessed to his younger ones, to the disherison of the two elder, of whom the second disputed the will; but it was established on reference to the _pandits_
of the Court. Their answers were short; simply affirming the validity of the instrument according to the Shástra.* Sir Robert Chambers and Sir William Jones concurred in this determination.†—Strange’s Hindu law, Vol. I. p. 262.

II. The second case is that of Eshan-chand Roy‡ Appellant versus (Rájá) Eshor-chand Roy‡ Respondent, which is as follows:—

In the year 1781, Kishen-chand, Zemindar‡ of Nuddea, by a deed of gift executed shortly before his decease, reciting, that he was infirm and approaching to his end; that his Zemindaree (termed by him his ráj or principality) had never been divided; and that he wished to prevent quarrels respecting it among his sons, after his death; settled the whole Zemindaree with its honours on Sheo-chand,‡ the eldest of his four surviving sons, with pecuniary provision for the three younger, and for the adopted children of two other (deceased) sons, payable out of the proprietary income of the Zemindaree. The eldest son was accordingly put in possession of the estate; and at his demise was succeeded by Eshor-chand, his son. In August 1789, Eshan-chand, one of the younger sons of Kishen-chand, brought this suit in the Zillah Court at Nuddea, against his nephew Eshor-chand, for a fourth share of the Zemindaree, as one of the sons of Kishen-chand, on the ground that by the Hindu law of inheritance, each of the sons was entitled to a portion; that the disposition made by Kishen-chand was not a gift, and at all events that he had not by law power to make one; against which the defendant pleaded his title to the whole estate, under the deed in his father’s favour: and the question in the case (independently of the point as to whether the Zemindaree was or was not subject to division) was whether the Zemindar was legally empowered, or not, to make the gift pleaded by the defendant. Nu-

* Now the Shástra knows no such instrument as a will. The ground with the pandits probably was (the Bengal maxim) that, however inconsistent the act with the ordinary rules of inheritance and the legal pretenses of the parties, being done, its validity was unquestionable.—Remark by Sir Thomas Strange.—See Elements of Hindu law Vol. I. p. 262.

† To this it can only be answered, that the motives which actuated the pandits in their exposition of the law, and the judges in their decision, are avowedly stated on conjecture only; and that if such motives be allowed to operate, there must be an end to all law, the maxim of factum valet superseding every doctrine and legalizing every act.—Remark by Sir William Macnaghten.—As his work on the Hindu law, Vol. I. pp. 6, 7.

‡ Properly, Ishána-chandra. Shib-chandra, 1’chaur-chandra & Krishná-chanra.
merous pandits, of different parts of the country, were consulted; and, according to the majority of their opinions, by which, (whether the Zemindaree had been previously exempt from division or not,) the gift made by the Zemindar, settling the Zemindaree on the eldest son, with a provision for the younger ones, was declared legal. The Judge of Nuddea, maintaining the validity of the gift, and of the title derived from it, decreed the whole Zemindaree to be the right of the defendant, subject to a pecuniary provision for the plaintiff. And the Sudder Dewanny Adawlut, in appeal, (present C. Stuart, F. Speke, and W. Cowper,) affirmed his decree. The opinion delivered by the two distinguished pandits, Jagan-nath and Kripa-ram, was founded on the following reasons: 1st, that, according to law, a present made by a father to his son through affection, shall not be shared by the brethren: 2nd, that, what has been acquired by any of the enumerated lawful means, among which inheritance is one, is a fit subject of gift: 3rd, that a co-heir may dispose of his own share of undivided property: 4th, that, although a father be forbidden to give away lands, yet, if he nevertheless do so, he merely sins, but the gift holds good: 5th, that, Raghu-nandana, in the Dnya-tattva, restricting a father from giving lands to one of his sons, but clothes and ornaments only, is at variance with Jimuta-vahana, whose doctrine he espouses, and who only says that a father acts blamably in so doing: 6th, that, a principality may lawfully and properly be given to an eldest son.*—The 23rd of February 1792.—S. D. A. R. Vol. 1. pp. 2, 3.

* Admitting the father's disposition of his estate in favour of his eldest son to have been an improper exercise of power on his part, as possessor of the hereditary patrimony, still the validity of a gift actually made by a father, is affirmed by Jimuta-vahana (Ch. 2. paras. 29 and 30.) For, since the gift of the entire estate to a stranger would have been valid, (however blamable the act of the giver might be,) the donation in favour of one son, with provision for the support of the rest, would seem to be equally valid according to the doctrine received in the province of Bengal. And after extending to the case of sons, no less than to that of strangers, Jimuta-vahana's position, respecting gifts valid, though made in breach of the law, it becomes necessary to the consistency of the doctrine equally to maintain, that a father's irregular distribution of the patrimony at a partition made by him in his life-time, in portions forbidden by the law, shall in like manner be held valid though on his part sinful. No opinion was taken from the law officers of the Sudder Court in this case. But it has been received as a precedent, which settles the question of a father's power to an actual disposition of his property, even contrary to the injunctions of the law, whether by gift, or by will, or by distribution of shares.—Note appended to the report of the above case.

According to the (Sudder) Court's decisions &c. this note seems to be erroneous and
The above report does not give all the details: the report published by Sir Thomas Strange is therefore added to supply the deficiency. This as follows:

Appellant is the uncle of Respondent, the present Rájá of Nuddea; and claims from him one-fourth of that Zemindaree, upon the ground of his being one of the four sons of Rájá Krishṇa-chander (the grandfather of Respondent,) and therefore entitled to one-fourth of his landed property, agreeably to the Hindu law. It appears that Rájá Krishṇa-chander bequeathed by two wills (the one in the Bengalee, and the other the Persian language) the whole of the Zemindaree to his eldest son (Rájá) Shib-chander, who accordingly succeeded to the Zemindaree, and obtained a Dewanny Sunud from Government. Rájá Shib-chander also bequeathed the whole of the Zemindaree by will to

incorrect, as far as it regards the father's power of making irregular or unequal distribution of ancestral property.—See Colebrooke's letter to Sir Thomas Strange (Elements of Hindn law, Vol. II. pp. 223,224,) and Bhoved'ni-charan Banerjea versus the heirs of Ràm-kànta Banerjea (S. D. A. R. Vol. II. p. 201, ante, p. 436,) from which it will be seen that the father has no power to make unequal distribution of ancestral property, and that such distribution, if made, is invalid and revokable.

In this case the pandits are stated to have assigned six reasons for this opinion, not one of which except the last appears entitled to any weight. The last reason assigned, namely, 'that a principality may lawfully and properly be given to an eldest son,' is doubtless correct, and taking a Zemindaree in the light of a principality, is applicable, and would alone have sufficed to legalize the transaction. A principality has indeed been enumerated among things not divisible. But with respect to the other reasons assigned, they may be briefly replied to as follows: To the first, 'That, according to law, a present made by a father to his son, through affection, shall not be shared by the brethren,' it may be objected, that this relates to property other than ancestral, over which the father is expressly declared to have control. To the second, 'What has been acquired by any of the enumerated lawful means, among which inheritance is one, is a fit subject of gift;' that this supposes an acquisition in which no other person is entitled to participate, and not the case of an ancestral estate, in which the right of the father and son has been declared equal. To the third, 'That a co-heir may dispose of his own share of undivided property,' that his right to do so is admitted; but this does not include his right to alienate the shares of others. To the fourth, 'that although a father be forbidden to give away lands, yet if he nevertheless do so, he merely sins, and the gift holds good,' that the precept extends only to property over which the father has absolute authority, and cannot affect the law, which expressly declares him to have no greater interest than his son in the ancestral estate. And to the fifth, 'That Raghu-nandana in the Dáya-tattva, restricting a father from giving lands to one of his sons, but clothes and ornaments only, is at variance with Jímśita-çāhana, whose doctrine he espouses, and who only says that a father acts blamably in so doing,' that no such variance in reality exists.—Macn. H. L. Vol. I. pp. 7, 8.
his eldest son (Rajá) Ishwar-chander, the Respondent. The authenticity of the above wills is established; and a majority of the pandits referred to have declared them valid according to the Hindu law. It further appears from the genealogical table of the family, delivered in by the Konan-gos, that the Zemindaree of Nuddea has never been divided; and by the 137th article of the Regulations, it is directed that, in cases of succession to Zemindarees, the Judge do ascertain whether they have been regulated by any general usage of the pergannah where the disputed land is situated, or by any particular usage of the family suing; and do consider in his decision the weight due to the evidence on this head. It appears therefore that the appellant’s claim is contrary both to law and the usage of the Zemindaree.

The appellant, however, is entitled to a maintenance; and the judge has awarded to him the further sum of Sicca Rupees 250 per month to be paid from the Zemindaree, in addition to the sum of 250 Rupees before received by him; upon the ground that the former sum was inadequate to his situation and circumstances.—The 23rd of February, 1792. (Signed) G. H. Barlow, Examiner and Reporter to the Sudder Dewanny Adawlut.—(See Strange’s H. L. Vol. II. pp. 435, 436.)

* It was the case of one of the great Zemindarees of the country, which the testator, the Rajá, having enjoyed during his life under the will of his father, to the exclusion of his three brothers, left by will to his son; against whom one of his uncles instituted a suit for the recovery of his fourth share, disputing the right of the grandfather, so to dispose of property that was ancestral. The question was discussed upon the will of the grandfather of the defendant, which appears to have been an assignment in trust, by way of gift to his eldest son, the elder brother of the plaintiff, in contemplation of death; providing to a certain degree for his other sons, but very inadequately, compared with what they would have been entitled to had they been allowed to succeed to their legal shares. The latter of the two wills recited that the Zemindaree never had been divided; but that, pursuant to the custom of the country, it had always been enjoyed by the eldest son; in consideration of which the testator had left it to his eldest son, in the presence of the Brahmans of Nuddea, whom he had assembled to be witnesses of the gift. Accordingly, the defendant contended, independent of the will, that the estate in question, according to the nature of it, was his, in right of inheritance; and it was proved in the cause in point of fact, that it had always been enjoyed by one son, in exclusion of the rest, though not uniformly by the eldest; but sometimes by the one deemed the fittest to manage a property of that description, pursuant to the spirit of the Hindu law in that respect. The means resorted to by the Court of Appeal, for information as to the law, appears to have been as extensive as possible; references having been made, not only to numerous pandits named by either party, but to the Pandits of the several courts in the provinces, as well as to those at the Presidency; among which latter was Jagan-nita Turishanathnathn.
III. The third case is that of Rām-kumār Nyāya-bāchaspāti versus Krishna-kinkar Tarka-bhūshān, decided by the Sudder Dewanny Adawlut on the 24th of November 1812. In that case it was maintained that the gift by a father of the whole ancestral estate to one son, to the prejudice of the rest, or even to a stranger is a valid act, (although an immoral one,) according to the doctrine received in Bengal.*

The compiler of the Digest. And, though a great majority, including Jagat māthā, were in favour of the acts of the two testators, upon the general ground of the competency of a Hindu to dispose of his property as he pleases, without regard to the nature of it, whether ancestral or acquired, publick or private, yet the Court affirming the decree which had been in favour of the defendant, expressly made the nature of the property, and the course in which it had always been enjoyed, according to the custom of the country, an ingredient in their determination; as may appear from the extract inserted in the appendix. Another thing to be remarked is, that the Court, not satisfied with the sum specified in the former of the two wills, as a provision for the plaintiff, (being only 250 rupees per month,) took upon itself to increase it to 500, upon the ground, as the decree declares, that the former sum was inadequate to his 'situation and circumstance.' This tends to show that even, in Bengal, under the modern practice, the father of a family, according to his means, cannot leave it inadequately provided for, much less entirely destitute.—Strange’s Hindu law, Vol. I. pp. 262—265.

* To refute the opinion declared by the Pāṣṭis on that occasion, it is merely necessary to state the authorities quoted by them, which would have been more applicable to the maintenance of the opposite doctrine. The following were the authorities cited in support of the above opinion. 1st. The text of Visuṣu, cited in the Dāya-bhāṣya: “When a father separates his sons from himself, his will regulates the division of his own acquired wealth.” 2nd. A quotation also from the Dāya-bhāṣya: “The father has ownership in gems, pearls, and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions; and has power to distribute them unequally; as Jāṅgṭavālkaśā ünlüates: The father is master of the gems, pearls, and corals, and of all (other movable property,) but neither the father nor the grandfather is so of the whole immovable estate. Since the grandfather is here mentioned, the text must relate to his effects. By again saying ‘all’ after specifying ‘gems, pearls, &c.’ it is shown, that the father has authority to make a gift or any similar disposition of all effects other than land, &c. but not of immovables, a corody, and chattels, (i. e. slaves ;) since here also it is said ‘the whole:’ this prohibition forbids the gift or other alienation of the whole, because (movables and similar possessions are) means of supporting the family. For, the maintenance of the family is an indispensable obligation: as Manu positively declares: “The support of persons who should be maintained, is the approved means of attaining heaven: but hell is the man’s portion if they suffer. Therefore (let a master of a family) carefully maintain them.” The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family: for the insertion of the word ‘whole,’ would be unmeaning (if the gift of even a small part were forbidden.) The text of Jāṅgṭavālkaśā, cited in Prāyasthāṭa nibṛtka: “From the non-performance of acts which are enjoined, from the commission of acts which are declared to be criminal, and from not exercising a control over the passions, man incurs punishment in the next world.” An exa.
IV. In the case of Rám-tanu Mallik and others versus Rám-gopál Mallik and Rám-ratan Mallik, regarding the will made by their father Nimái-charan Mallik, deceased, the Supreme Court, without referring to their pandits, were unanimous in its favour, considering the point as already settled, and decreed as follows: "This Court doth think fit to order and decree, and it is accordingly decreed and declared, that by the Hindu Law Nimái-charan Mallik, deceased, in the pleadings of this cause mentioned, might and could dispose, by will, of all his property, as well movable as immovable, and as well ancestral as otherwise."

"It is now to be observed, that the Court's decision was founded upon a construction of the testator's will, and an intention to construe it according to his meaning; that a sum sufficient for effectuating all the acts of piety he directed was ordered to be provided out of his estate for the purpose; that the legacies were all confirmed; that the estate was in other respects disposed of as it would have been had Nimái-charan Mallik died intestate; and that the Court expressly declared the right of a Hindu to dispose of his ancestral immovable property by his will; which, as I conceive, meant according to pleasure."—Sir Francis Macnaghten's Consideration, pp. 340—348.

V. The testator Darpa-nárayana Sarmano (Sharmá) was possessed of very large property, both movable and immovable. It was all, as he recited, self-acquired. His will contained the following provisions: "As my eldest son Sri Rádhá-mohan Bábá and third son Sri-krisna-mohan Bábá have discarded their guru (spiritual teacher,) and drink spirituous liquors, and have threatened to murder me, I have discarded them, and debar them from performing the ceremonies of burning my body and shráddha." He then gives to each of them 10,000 rupees, for their support and maintenance, and bequeathes to his youngest son, by his first wife, Pyári-mohan Bábá, he being deaf and dumb, 20,000 rupees for his maintenance.

An action of ejectment was brought upon the demise of Krisna-mohan, one of the discarded sons, for his share of Darpa-nárayan's
(his father's) estate. To this Bābās Gopī-mohan, Harimohan, Lādli-mohan, Mohini-mohan (the other sons of Darpa-naróyaṇ Sarmá) took defence, and upon proof of Darpa-naróyaṇ's will being duly made, there was a verdict for the defendants.—Cons. H. L. p. 349.

VI. Rámkriṣṇa Mallik had two sons,—namely, Boistab-dás and Sonátaṇ Dás, and one nephew named Níl-mañi, who was elder than the sons. In the month of Boisák, Bengal year 1200, or April 1793, (Níl-mañi then being sixteen or seventeen years of age,) Rámkriṣṇa executed a paper in the nature of a will, by which he declared his nephew (Níl-mañi) and his sons entitled in equal shares (each one third) to the whole of the property, and that it was to be so enjoyed by the three upon the death of him (Rámkriṣṇa.) To this paper the two sons of Rámkriṣṇa and his nephew Níl-mañi signified their assent in writing.

Sonátaṇ Mallik, who left a widow and two daughters surviving him, made a will by which he left his property, which consisted of every description, to his brother. Nearly sixteen years after the death of Sonátaṇ, the widow filed her bill, alleging her husband's intestacy, and claiming his estate, but the will was established.

Níl-mañi, about eighteen months before his death, adopted Rájendra as his son, but he continued to live with Boistab-dás, acquiescing in the apportionment of the estate which had been made by Rámkriṣṇa, and also in the will of Sonátaṇ; by which two dispositions, Boistab-dás became entitled to two-thirds, and Níl-mañi entitled to one-third of the family estates.

The cause and cross cause, between Rájendra and Boistab-dás, after the finding of the issue, came on for further directions upon the 8th of February, 1824; when it was declared that Boistab-dás Mallik was entitled to two-thirds of the property, movable and immovable, in the pleadings mentioned.—Cons. H. L. pp. 361, 362, 363, 366, & 369.

It may be inferred from the part of this proceeding, which relates to Sonátaṇ's share of the estate, that a Hindu may, by will, dispose of his ancestral immovable, as well as movable, property, and that he may do so to the prejudice of his wife and daughters, although they were unquestionably entitled, by the Hindu law, to the whole of his estate in preference to the person to whom it was given by will.
And further, that a Hindu may, by his will, bind his adopted son to an agreement, into which he himself had entered, to receive one-third, instead of one half, of the joint family estate; although it consists of ancestral immovable as well as movable property.—Sir Francis Macnaghten’s Considerations. p. 369.

IV. Rájó Naba-krishṇa, although he had a begotten son Rájó Ráj-krishṇa, and an adopted son Gopí-mohan Deb, left by his will an ancestral talook to the sons of his brother; and in one part of the will he made an absolute gift, and again in a subsequent part he made it conditional and retractable, declaring ‘plaintiff and the other legatees or their respective heirs to forfeit all right under the will respectively, in case of making any claim upon Ráj-krishṇa, for more than is bequeathed by the will.’ His right to do so was not questioned by any one; and by a decree passed in June 1800, (after Gopí-mohan Deb and Rájó Ráj-krishṇa had settled their disputes,) it was declared that they should take the estate and property of Rájó Naba-krishṇa as tenants in common; subject nevertheless, to all the provisions, made by the last will and testament of Rájó Naba-krishṇa, except only as to those provisions which respect Gopí-mohan Deb and Rájó Ráj-krishṇa.—See Cons. H. L. p. 256. And Montriou’s Cases of Hindu Law, p. 399.

Similar judgments have been passed in almost all the subsequent cases regarding gift or will. Some of them in substance are as follows:—

V. In the case of Rám-nárayan Dutt and others versus Sat-bansí and others, it was held that a deed of gift may be valid though clogged with certain conditions, and a person may convey all his property to another, though there be stipulations in the deed; that the donor should be maintained by the donee during his life-time, and that the exequial ceremonies of the former should be performed by the latter in consideration of the gift.—23rd June 1842. S. D. A. R. Vol. III. p. 377.

VI. In the case of Táriqí-charan versus Mussumnát Dási Dási, it was held that a Hindu of Bengal may lawfully convey all his property, by a deed of gift, to his brother, notwithstanding that he has a wife living. 31st July, 1842.—S. D. A. R. Vol. III. p. 397.
VII. In the case of *Jaga-mohan Roy versus Sri-mati Nimu Dasi*, it was held that a *Hindu* having sons living may dispose of immovable ancestral estate by will, without their consent.—21st June 1831. Clarke's Notes of decided Cases. pp. 101—119.

VIII. *Shurja-kumar Thakur's* widow filed a bill claiming as her husband's heir, and denying the existence of the will, by which he left a sum of money to his wife, and all the rest of his property, movable and immovable, ancestral and self-acquired, to his brothers: the will was well proved and no further question was raised.—Cons. H. L. pp. 360, 361.

IX. In the case of *Raghu-nath Pal's* will it was held that a father may distribute self-acquired property, movable and immovable, by will unequally among younger sons, leaving his eldest son a small monthly allowance.—Cons. H. L. pp. 369, 370.

X. The will of *Ramhari Biswas*, by which he left to *Pran-krishna* three-fourths, and to *Jaga-mohan* one-fourth, of his landed or immovable property, was established and held valid, no objection being raised whether *Ramhari* could not make an unequal distribution of immovable property by his will.—See Cons. H. L. pp. 370, 371.

**Remark.** Many of the wills made a provision for idols' establishments, and directed an expenditure for superstitious purposes; and they all have been carried to effect. (See *Ibidem*, p. 322.) Some of them in substance are as follows:—

XI. In the case of *Ram-dulal Sarkar and Chotiana-charan Sett versus Sri-mati Sonala Debi* and others, the will *Radha-kanta Chattopadhyay* (Chaterjea) was completely established as to all its provisions, and the court most fully recognised the right of a Hindu to make provision by his will for the performance of religious ceremonies and the maintenance of his family idols.—See Cons. H. L. pp. 313—335.

XII. In the case of *Deb-nath Sandyal* and others *versus* Patrick Maitland and Henry William Droz, it will be seen that out of an estate amounting to 335,501 rupees, the Court ordered the sum of 226,250 rupees, or upwards of 200,000 of the whole, to be applied to religious purposes, as the testator had directed by his will.—See Cons. H. L. pp. 371—376.
Thus the courts of justice went on upholding wills and deeds of gift of any description, and no one said a word against the legality and propriety of the same, until the Sudder Bench was graced by Mr. Henry Colebrooke, that eminent Sanscrit scholar, who, in reply to the questions sent by Sir Thomas Strange, gave his opinion on the subject, stating the true doctrine of the Hindu law as current in Bengal and elsewhere, which is as follows:—

Remarks. "After much consideration of the question, when agitated some years ago, it was here settled, that a will (though this disposal of property be unknown to the law, as was remarked by Sir William Jones) must nevertheless be held valid in the case of a Hindu; being in fact a gift made in contemplation of death, which the Hindu law, if it do not directly sanction, contains at least nothing to prohibit. Considering it then as a gift to take effect at a future time, determinable by a certain event, (decease of the giver,) I apprehend it must be governed and controlled by the general rules regarding gift."—Vide Strange's Hindu Law, Vol. II. p. 429.

Then in a letter written a few days after the above, he gives an ampler exposition of the law, with his own opinion on the subject, which is as follows:—

"When writing a few days ago, I stated that I thought a Hindu's will and testament must be governed and controlled by the general rules respecting gifts. It will hold good, I think, for the same things for which a gift made in his life-time would do so, and no otherwise. I should have added, however, that his legacies to his family must be controlled by the rules regarding partition made in his life-time by him, as father of the family. The principle I would lay down is, that a man cannot confer on a stranger, or his own kin, by will, (which I consider to be a donation in contemplation of decease,) what he could not bestow by deed of gift, or partition of patrimony. The utmost that can be said, is, that he may do that by testament, which he could have done by partition or donation between living persons. This is allowing all the force that can be given to a will, by taking it as a gift, in regard to what the testator has power to give; and, as a partition to inheritance, in regard to what he can distribute, but not give away."
"Upon the principle which I have stated, a Hindu in Bengal may leave by will all his own acquisitions: but would be restricted, if he have sons, from distributing ancestral property according to his mere pleasure. In provinces, in which the authority of Mitaksará prevails, a Hindu is restrained from giving away immovables, and from making any other partition of his possessions among his male descendants, than such as the law has sanctioned. Consequently, he would be withheld from distributing immovables in a mode unauthorised by the law, but may bestow movables of which the law permits him to make gifts on motives of natural affection: not, however, to the extent of his whole property."

"In short, if there be no sons, or male descendants, and the property be not shared by a co-heir, the whole of his possessions, being his separate and distinct property, may be disposed of by will, as he pleases. If he have a co-parcener, he cannot give away his entire share of the joint property; nor the whole of his possessions, if he have sons." See Strange's Hindu Law. Vol II. pp. 428, 424.

These are true expositions of the law and ought to have been acted upon; but it was too late. Numbers of wills and deeds of gift relative to the transfer of entire estates, movable and immovable, acquired and ancestral, had already been admitted and affirmed; and thereby the doctrine of 'factum valet' was too deeply rooted to be shaken, so much so that Mr. Colebrooke, seeing it too difficult to re-establish the doctrine laid down by him, at length wrote a letter to Sir Thomas Strange modifying his expositions in accordance with the prevalent practice and the decisions then in existence. The following is an extract of this letter:

"Upon reference to adjudged cases, and upon consideration of the inferences to be drawn from them, and principles held to have been settled by these judgments, I find occasion to correct that part of my letter on the subject of wills by Hindus, in which I said that a Hindu in Bengal may leave by will all his own acquisitions, but is restricted from distributing ancestral property among his children, according to his own pleasure. It is true that, if he make a formal partition of heritage, he is subject to restrictions; and no express decision has weakened the strict rule of law on this point. But a deed of gift, by which the ancestral property was unequally distributed, (or was given
to one son with a very inferior provision for the rest,) has been held valid by a solemn decision of the former Court of Sudder Dewanny Adawlut; and I understand that, in numerous instances, wills of Hindus, disposing of the ancestral as well as acquired property, according to the testators' pleasure, have been allowed by the Supreme Court."

"It appears to me an inconsistency, that a man may do that by gift or will which he may not do by a formal partition; and the Hindu legislators might have saved themselves the trouble of providing rules to regulate a father's distribution, if the whole may be evaded by the easy expedient of calling the distribution a gift, instead of a partition. But since the point is here a settled one, what I said on the subject may require modification. A Hindu in Bengal may leave by will, or bestow by deed of gift, his possessions, whether inherited or acquired; and the gift or legacy, whether to a son or stranger, will hold, however reprehensible it may be, as a breach of an injunction and precept."—July 22nd. 1812.—See Strange's Hindu Law, Vol. II. pp. 425, 426.

This ultimate acquiescence of Mr. Colebrooke in the doctrine in question, although it was after a remonstrance against it, and merely to accord with the adjudged cases, rendered the point almost unquestionable. In vain did Sir William Macnaghten afterwards contest the doctrine and declare it illegal, giving expositions of the law, and showing reasons for the same:* it was then too prevalent to be stopped.

* Some of his reasons and expositions are as follows:—"In ancestral real property, the right is always limited; and the sons, grandsons, and great grandsons of the occupant, supposing them to be free from those defects, mental or corporeal, which are held to defeat the right of inheritance, are declared to possess an interest in such property equal to that of the occupant himself; so much so that he is not at liberty to alienate it, except under special and urgent circumstances, or to assign a larger share of it to one of his descendants than to another. With respect to personal property of every description, whether ancestral or acquired, and with respect to real property acquired or recovered by the occupant, he is at liberty to make any alienation or distribution which he may think fit, subject only to spiritual responsibility. The property of the father being thus restricted in respect of ancestral real property, and wills and testaments being wholly unknown to the Hindu law, it follows, for the sake of consistency, that they must be wholly inoperative, and that their provisions must be set aside, where they are at variance with the law; otherwise a person would be competent to make a disposition to take effect after his death, to which he could not have given effect during his life-time. A will is nothing more or less than "the legal declaration of a man's intentions, which he wills to be performed after his death;" but willing to do that which the law has prohibited, cannot be held to be a legal declaration of
On the contrary, it received further and stronger corroboration from
the pens of the Sudder and Supreme Courts in consequence of his
a man’s intentions. There may be a gift in contemplation of death, but a will, in
the sense in which it is understood in the English law, is wholly unknown to the Hindu system;
and such gift can only be held valid under the same circumstances as those under which
an ordinary gift would be considered valid. What may not be done inter vivos, may not
be done by will. Of this description is the unequal distribution of ancestral real property.”

In the case of Bhoomīchāraṇa Banerjea versus the heirs of Ram-kanta Banerjea
which was decided by the Sudder Dewanny Adawlut on the 27th of December, 1816, the
question as to the father’s power was thoroughly investigated. There being a difference of
opinion between the pāṇḍītas attached to the Sudder Dewanny Adawlut, the following
question was proposed to the pāṇḍītas of the Supreme Court, Thārā-pradāś and Mrityunjoy,
to Nara-hari, pāṇḍīt of the Calcutta Provincial Court, and Ram-joy, a pāṇḍīt attached
to the College of Fort William: “A person whose elder son is alive, makes a gift to his
younger, of all his property, movable and immovable, ancestral and acquired. Is such a gift
valid, according to the law authorities current in Bengal, or not? and if it be invalid, is
it to be set aside or not?

The following answer, under the signatures of the four pāṇḍītas above mentioned, was
received to this reference:—“If a father, whose elder son is alive, make a gift to his
younger, of all his acquired property, movable and immovable, and of all the ancestral
movable property, the gift is valid, but the donor acts sinfully. If during the life-time of
an elder son, he make a gift to his younger of all the ancestral immovable property, such gift
is not valid. Hence, if it have been made, it must be set aside. The learned have agreed
that it must be set aside, because such a gift is a fortiori invalid; inasmuch as he (the
father) cannot even make an unequal distribution among his sons of ancestral immovable
property; as he is not master of all; as he is required by law, even against his own will,
to make a distribution among his sons of ancestral property not acquired by himself (i. e.
not recovered;) as he is incompetent to distribute such property among his sons until the
mother’s courses have ceased, last a son subsequently born should be deprived of his
share; and as, while he has children living, he has no authority over the ancestral
property.”

“Authorities in support of the above opinion:—1st. Vishnu, cited in the Dhya-
bdāga:—‘His will regulates the division of his own acquired wealth.’ 2nd. Jagya-
valkya, cited in the Dhya-bdāga:—‘The father is master of the gems, pearls, corals, and
of all other movable property.’ 3rd. Dhya-bdāga:—‘The father has ownership in gems
pearls, and other movables, though inherited from the grandfather, and not recovered
by him, just as in his own acquisitions.’ 4th. Dhya-bdāga:—‘But not so, if it were
immovable property, inherited from the grandfather, because they have an equal right
to it. The father has not in such case an unlimited discretion.’ Unlimited discretion
is interpreted by Sri-kṛiṣṇa Turakānaka to signify a competency of disposal at
pleasure. 5th. Dhya-bdāga:—‘Since the circumstance of the father being lord of all
the wealth is stated as a reason, and that cannot be in regard to the grandfather’s estate,
an unequal distribution made by the father is lawful only in the instance of his own ac-
quired wealth.’ Commentary of Sri-kṛiṣṇa on the above texts:—‘Although the father
be in truth lord of all the wealth inherited from ancestors, still the right here meant is not
declaring the doctrine illegal. It being seen in the late Supreme Court that Sir William Macnaghten’s dictum was in opposition to the doc-

merely ownership, but competency for disposing of the wealth at pleasure; and the fa-
ther has not such full dominion over property ancestral.’ 6th. Daśya-bhāga :- ‘If the fa-
ther recover paternal wealth seized by strangers, and not recovered by other sharers, nor by his own father, he shall not, unless willing, share it with his sons; for in fact it
was acquired by him.’ In this passage, Manu and Vishnu, declaring that, ‘he shall not, unless willing, share it, because it was acquired by himself,’ seem thereby to intimate a partition amongst sons, even against the father’s will, in the case of hereditary wealth not acquired (that is, recovered) by him. 7th. Daśya-bhāga :- ‘When the mother is passed child-bearing,’ regards wealth inherited from the paternal grandfather; since other chil-
dren cannot be born by her when her courses have ceased, partition among sons may then take place; still, however, by the choice of the father. But if the hereditary estate were divided while she continued to be capable of bearing children, those born subsequently would be deprived of subsistence: neither would that be right; for a text expresses:

“They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support; and the dissipation of their hereditary maintenance is censured.’ Śṛi-krishṇa has interpreted ‘the dissipation of hereditary maintenance’ to signify the being deprived of a share in the ancestral wealth. Duṣṭa-nir-
ṇaya :- ‘If there be offspring, the parents have no authority over the ancestral wealth; and from the declaration of their having no authority, any unauthorized act committed by them is invalid.’ Text of Vidyāsākhaṇa, cited in the Medhātithi :- ‘Let the Judge declare void a sale without ownership, and a gift or pledge unauthorized by the owner.’ The term ‘without ownership,’ intends incompetency of disposal at pleasure. Text of Nārada :- ‘That act which is done by an infant, or by any person not possessing authority, must be considered as not done. The learned in the law have so declared.’

I have given the above opinion, together with the authorities cited in its support, at full
length, from its being apparently the most satisfactory doctrine hitherto recorded on the subject. By declaring void any illegal alienation of the ancestral real property, it preserves the law from the imputation of being a dead letter, and protects the son from being deprived by the caprice of the father, of that in which the law has repeatedly and expressly declared them both to have equal ownership. Upon the whole I conclude that the text of Daśya-bhāga which is the ground-work of all the doubts and perplexity that have been raised on this question, can merely be held to confer a legal power of alienating property, where such power is not expressly taken away by some other text. Thus in Bengal a man may make an unequal distribution among his sons of his personally acquired property, or of the ancestral moveable property; because, though it has been enjoined to a father not to dis-


trine affirmed in the decisions, and consequently there arising a doubt as regards its legality, a letter was addressed by the Judges of the Supreme Court to the Judges of the Sudder Dewanny, requesting an answer to the following questions:—

1st. Whether according to the doctrines of the Sudder Dewanny Adawlut, a Hindu who has sons can sell, or give, or pledge, without their consent, immovable ancestral property situated in the province of Bengal?

2ndly. Whether without the consent of the sons, he can by will prevent, alter, or affect in any way their succession to such property?

To these questions the following letter was received in reply:—

"We have the honor to acknowledge the receipt of your letter, requesting our opinion as to the doctrine entertained by the Court of Sudder Dewanny Adawlut on certain points of Hindu law."

"On mature consideration of the points referred to us, we are unanimously of opinion, that the only doctrine that can be held by the Sudder Dewanny Adawlut, consistently with the decisions of the Court and with the customs and usages of the people, is, that a Hindu, who has sons, can sell, give, or pledge, without their consent, immovable ancestral property situate in the province of Bengal; and that without the consent of the sons, he can, by will, prevent, alter or affect their succession to such property."

"We beg leave to add, with reference to the case adverted to in your letter, decided in 1816, that we do not consider the opinions of the Judges, as recorded in that case, to affect or contravene the principle on which the previous decisions of the Court were founded."—21 September, 1831.

(Signed)

Ross, C. T. Sealy, R. H. Rattray, H. Shakspeare,

M. H. Turnbull
VYAVASTHÁ-DARPANA.

On receipt of the above letter, Grey, C. J. recorded his judgment as follows:—

"We have before us a most important document, I mean the letter signed by the five judges of the Sudder Dewanny, in reply to a letter addressed to them by the judges of this Court, requesting a statement from them of what the decisions of the Sudder Dewanny had been on this point of Hindu law. It is impossible to say, after the communications we have received from the judges of the Sudder Dewanny, that the doctrine on this point laid down in Mr. William Macnaghten's book, would be acted upon in that Court as the Hindu law of Bengal; but it is undoubtedly the general law of the Hindus, but in Bengal a different usage prevails. This in no degree alters the very high opinion which I entertain of Mr. Macnaghten's work; it is a work which evinces the greatest research and soundest judgment, and must always be esteemed as a very valuable authority.

Ebanks, J. concurred in the judgment of the Chief Justice.

Ryan, J. "I concur in the judgment of the Court. Surely the law on this subject ought now to be considered as finally set at rest. The decisions of this Court were uniform from the time of its establishment, until the publication of Mr. Wm. Macnaghten's book; and it can be a matter of no wonder that we were for a short time misled by his authority. I myself was the first to fall into the error, and nonsuited a party in a suit in ejectment, entirely on his statement of the Hindu law, but on further consideration, I think I was wrong. Shortly after his book had raised these doubts, the present case was brought forward, and the Court have had the advantage of an able and elaborate argument by the bar on both sides of the question; the Judges have most deliberately considered the matter; they have examined all the former decisions of this Court, and they have the unanimous opinion of the five Judges of the highest native Court in India. It is under these circumstances that the Court now unanimously determine, that the doubts, which they did entertain in consequence of Mr. Wm. Macnaghten's work, no longer exist, and they

Henry Colebrooke to be the highest European authority on matters of Hindu law; but supposing others to be equally well read, no one can be placed in competition with him as to the two qualifications,—a knowledge of the law, and of the practice and observances of this Court, in which he was so many years the chief judge."—Clarke's Notes of Decided Cases, p. 111.
return to those doctrines which have universally prevailed in this Court since its establishment. I therefore hope the question is now finally settled.—Clarke’s Notes of Decided Cases. pp. 115—118.

**Grey, Franks & Ryan, Judges.**

In addition to the above, it is to be remarked that by selecting, approving of, and publishing as precedents in the second volume of his work on Hindu law the following admitted legal opinions, Sir William Macnaghten appears to have contradicted his own opinion against the legality and validity of a Hindu’s will. As regards the learned compiler’s assertion that—“wills and testaments are wholly unknown to the Hindu law,”—it may be remarked that a will, according to his definition, is nothing more or less than the legal declaration of a man’s intentions, which he wills to be performed after his death, while a Hindu’s will is defined by Mr. H. Colebrooke to be in fact a gift in contemplation of death; and in both the senses, it is comprehended in the passages which are cited as authorities for the Vyavasthā No. 352, and which as well as the following text of Nárada give unlimited power to a Hindu proprietor to dispose of his property as he pleases. “Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth.”—Nárada. (post. p. 572.) Besides, Sri-krishṇa Tarkālankāra, who is one of the highest Bengal authorities, appears to have, by the passage subjoined, provided in a manner for the disposition to take place after one’s death. “But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing, however, the exercise of power over them, that is not partition: for his property still subsists, since there has been no relinquishment of it on his part. Therefore the use of the term partition, in such an instance, is lax and indeterminable.” (See Dā. bhā. p. 17.) Thus testamentary dispositions being included in, and intimated by, the authorities above cited, will is not wholly unknown to the Hindu law as affirmed by the learned compiler.

*Legal opinions delivered in, and admitted by, the several courts of judicature, and examined and approved of by Sir William Macnaghten.*

Q. A Shādra, having no male issue, and having disposed of his eldest daughter in marriage, makes a gift of his whole property, mo-
vable and immovable, while his maiden daughter and wife are living, to such eldest daughter, and then dies. In this case, is the donee entitled to exercise exclusive proprietary right over the property assigned by virtue of the deed of gift? and if so, is she at liberty to make a gift of a part of the property to her sister, and is such gift legal?

R. Supposing the Shádra, who is destitute of male issue, but having a wife and a maiden daughter, to have given his whole estate, consisting of lands and other property, to his married eldest daughter, the gift must be considered good and legal. The authorities for this opinion are laid down in the Dáya-bhóga. "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."*—Nágáda.

Should the donee have bestowed a portion of the gift on her unmarried sister, that gift also must be considered complete and binding.

Authorities:—The texts of Kátyáyana cited in the Dáya-bhóga.
"That which is received by a married woman or a maiden in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such gifts, is recognized in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale, according to their pleasure, even in the case of immovables."

* Though according to the law as current in Bengal, the father is competent to dispose of his whole property, provided there be neither son, nor son's son, nor sons' grandson, yet he acts sinfully if he do so while a maiden daughter exists, whose initiatory ceremony (that is, marriage) is unperformed, or if his family suffer for the necessaries of life. It is incumbent on a housekeeper to initiate his children and to support his family; and he who does not perform those duties is culpable, as expressly declared by Manu: "Reprehensible is the father who gives not his daughter in marriage at the proper time, and the husband who approaches not his wife in due season; reprehensible also is the son who protects not his mother after the death of her lord."
From the doctrine quoted, it is clear that the donee was competent to make a gift of the property received from her father to her maiden sister. This is conformable to the Dáya-bhága, Dáya-tattva, Srí-krishna Tarkálokáyá, and other legal authorities.

Zillah Mymunsing, January 18th., 1823.—Macn. H. L. Vol. II. Chap. 8, Case 19, pp. 227, 228.

Q. A person having a sister (mother of male issue or childless,) can he, according to the law as current in Bengal, dispose of his ancestral landed estate by gift, to a person paternally related to him? Supposing the proprietor to have died without making any alienation of his property, leaving no male issue, in this case how will his property be distributed among his sister, sister’s son, and his paternal relations?

R. There is no disabling provision in the law against a proprietor’s alienation of his patrimonial immovable property while his sister or sister’s son exists; consequently the donor was competent to give his property to his paternal relation, and the gift is good and legal. Supposing the childless proprietor to have died without making any gift, leaving his sister, his sister’s son, and his paternal relations; the sister, provided she be a maiden, is entitled to wealth sufficient to defray her nuptial expenses, but with exception to such allotment, she has no claim on her deceased brother’s property. If there be no heir of the deceased down to his brother’s grandson, the sister’s son is entitled to inherit from him, for he confers a benefit on the deceased’s ancestors by performing the double rights.

Authorities:

Nárada:—“Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth.”

“Though immovables or bipeds,” &c.

“Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.”

The right of a sister is denied by the following text:
"Riches were ordained for sacrifice. Therefore they should be allotted to persons who are concerned with religious duties, and not to be assigned to women, to fools, and to people neglectful of holy obligations."

By the mention of "women," must be understood all females, except the wife, daughter, mother, paternal grandmother, and father's grandmother of a person dying childless.

Dacca Court of Appeal, June 21st., 1323.—Macn. H. L. Vol. II. Ch. 8, Case 20, pp. 228—230.

Q. A person brought an action, claiming a third part of a certain landed estate, against the purchaser of the land, and his brother who had sold it; and previously to the decision, the complainant assigned his interest in the property in dispute by a deed of gift to his minor nephew, who was the son of the selling brother. In this case, is the deed of gift complete and binding; and in virtue of the same, is the minor donee's guardian authorised to carry on the suit for the estate, as the complainant was to do?

R. If it be proved that the complainant, in the full possession of his intellectual faculties, executed the deed of gift, disposing of his entire interest in the property in dispute, in favour of his minor nephew, and subsequently died, the deed of gift is, according to law, good and valid; and by virtue of such deed the minor donee's guardian, as manager of his affairs, may carry on the suit for the property in question.

Calcutta Court of Appeal, May 31st., 1821. Prem-chand versus Ramchander Bhurja.—Macn. H. L. Vol. II. Ch. 8, Case 22, p. 231.

Q. Is a person, having an uterine sister, competent to dispose of his ancestral landed and other property by gift, in favour of a stranger? and if so, is his sister entitled to get her maintenance out of the property given?

R. It is competent to a person to give away his patrimonial property, movable and immovable, though his uterine sister be living. If the sister be married, she has no right to have maintenance out of the gift.

City Chinsurah.—Macn. H. L. Vol. II. Ch. 3, Case 24, p. 232.
Q. A person, by recourse to law, recovered some of his father’s acquired rent-free landed property which had been formerly lost, while his other brothers were living together with him and his father as an undivided and joint family, and the father verbally gave the property so recovered to the son who had recovered it, and the donee took possession of the same. In this case, is the donation, according to law valid and good, or otherwise?

R. Should one of the brothers recover the patrimonial immovable property which had been formerly lost or seized by strangers while the family was in an undivided state, the other brothers must give a fourth part of the land so recovered to him who retrieved it, in addition to his regular allotment. Here the property recovered was the father’s self-acquisition, and the father voluntarily gave it to the recoverer: therefore the gift is legal. This opinion is conformable to the Dāya-tattwa and other authorities.

Zillah Jungle Mehals; June 19th, 1821.—Macn. H. L. Vol. II. Ch. 8, Case, 28, pp. 236, 237.

Q. A person, having an uterine brother, executes an instrument, in favor of his wife, in which he desires that she, on his death, should be allowed to make a gift or sale of his self-acquired property, movable and immovable, and dies without issue. In this case, is the widow entitled to dispose of the property mentioned in the deed, by gift or sale?

R. Supposing the deceased to have left authority with his wife by a written instrument to make a gift or sale of his self-acquisitions, consisting of movable and immovable property, while his uterine brother was living, and to have died leaving no heir down to the great-grandson, the widow, according to her husband’s permission, is competent to give or sell the property in question. This is the received opinion.

Calcutta Court of Appeal.—Macn. H. L. Vol. II. Ch. 8, Case 31, p. 238.

Q. A person, having a wife and two daughters, made a verbal gift in favour of one of them of his whole ancestral landed and other property; in this case, is the gift legal or otherwise?
A man may give his whole property to one daughter, to the exclusion of his wife and another daughter.

R. Under the above circumstances, the gift orally made by the father to one of his daughters, though when he made the gift there were his wife and another daughter living, is legal and valid.

Zillah Burdwan, April 14th., 1821.—Macn. H. L. Vol. II. Ch. 8, Case 35, p. 243.

Q. A Brahmin, who had some rent-free lands and other property, died, leaving three sons A, B & C, and a daughter, D. The sons jointly enjoyed their father’s property for some time and the eldest of them (A) died, leaving a son and daughter. The son of A took possession of his father’s share, and died shortly afterwards, and on his death it devolved on his sister’s son. The second son B died, leaving only a widow as his heir; and the younger son C, having supported B’s widow, took possession of two shares; that is, one for himself, and the other for his deceased brother B. In this case, are C and B’s widow competent, having assigned a small portion of their shares of the property in favour of their spiritual teacher, family priest, and D’s son, to give the remainder to the grandson of A; and if they have given their shares by a written instrument, is the deed of gift legal? and if not, who is entitled to succession?

Property may be given to a brother’s daughter’s son, to the exclusion of a sister’s son; though according to the law of inheritance, the latter would exclude the former.

R. Under the circumstances stated, the younger son C, and B’s widow, were competent, having assigned a small portion of their respective shares to their spiritual teacher, family priest, and D’s son, to give the remainder to A’s grandson in the female line by a deed of gift, which deed must be considered legal. But if those persons had died without making such gift, then the property would have devolved on the sister’s son (D’s son.)

Calcutta Court of Appeal.—Nanda-rām versus Rām-tanu Mookerjea. Macn. H. L. Vol. II. Ch. 8, Case 38, pp. 245, 246.

Q. A person, on the death of his son and wife, having reserved some landed property which descended to him from his forefathers, for the maintenance of his sisters and their sons, disposed of the remaining portion, by a deed of gift in favour of his spiritual teacher or his son, the deed being executed with the consent, and in the presence, of his sisters, but not of their sons. In this case, is the gift legal?
R. Under the circumstances stated, the gift must be considered good and valid. According to the Hindu law, a man who has neither a son, nor a son's son, nor a great-grandson, is competent to give away his ancestral real estate, even though there be his other relations living: in this case, the sister's or their sons' consent is superfluous.

Zillah Burdwan, July 25th., 1823.—Macn. H. L. Vol. II. Ch. 8, Case 44, pp. 252, 253.

Q. A person having an adult son, without that son's consent disposed of by gift to a stranger a part of his maternal grandfather's dependent landed estate, the zemindar or proprietor of which had dispossessed him, conditioning in the deed, that if he (the donee) could recover possession of the property, he might exercise proprietory right over it, and (the donor) would have no concern with it. The donee having recovered the estate, in this case, is the deed of gift binding and legal? and if so, is the donor's son's property divested in virtue of the gift? or on the death of the donor, will his son acquire the right of ownership?

A person having a son may make a gift of his maternal grandfather's landed property, which had been usurped, on condition of the donee's recovering it.

R. Under the circumstances stated, the donor was competent to give his maternal grandfather's immovable property, which devolved on him by succession, to a stranger, and the right is complete and binding. There is no law that the daughter's son's son shall inherit, consequently the donor's son has no right to annul the gift. This opinion is conformable to the Dáya-bhága, Vivóda-chintá-mañi, Dáya-rahashya, and other works of law.

Authorities:—

The text of Vrhihaspati, cited in the Vivóda-chintá-mañi: “Of houses and of land acquired by any of the seven modes of acquisition, whatever is given away should be delivered; distinguishing land as it was left by the father, or gained by the occupier himself. At his pleasure he may give what himself acquired.”

It is laid down in the Dáya-bhága, that “therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.”
The passage of Shankha, quoted in the Dīya-rahashya: "Land inherited in regular succession, but which had been formerly lost, and which a single (heir) shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

Macn. H. L. Vol. II. Ch. 8, Case 47, pp. 255, 256.

Q. A proprietor of a ten-anna share of a landed estate had a son, who died before him, leaving a widow and three daughters. The said proprietor having brought the appellant from a certain place, gave him in marriage to one of his three granddaughters, and presented him with his entire share of the property as a joutaka gift (property given at a marriage,) by a deed; and it is also proved that the appellant took possession of the property so given, and sold a two-anna share of it with the consent of his wife, which sale was admitted as good and valid by the decisions of the Zillah and Provincial Courts. In this case, has the widow of the son of the donor a right to sell any portion of the remaining eight-anna share?

R. It appears from the evidence adduced in this case, that the landed proprietor in question separated his portion of the estate from that of his co-partner, and caused it to be registered in his son's name; and that having brought the appellant from a distant place, he gave him in marriage to one of his three grand-daughters, presenting him with his entire estate as a joutaka or nuptial gift, while his own wife and his son's widow and two unmarried daughters were living; and that he died, leaving directions with the appellant to support his son's widow. Under these circumstances, the property which is specified in the deed of gift, according to law being the appellant’s estate, the deceased son’s widow has no right over it, and cannot sell it. It also appears that the deed of gift was attested by three witnesses; consequently the donee's proprietary right to the estate specified in the deed being so established, the son's widow has no right to it, and therefore her claim is inadmissible.

Authorities:

Manu:—"After the (death of) father and mother, the brethren, being assembled, must divide equally the paternal estate; for they have not power over it while their parents live."

73
VISHNU:—"When a father separates his own sons from himself, his will regulates the division of his own acquired wealth."

DEVALA:—"For sons have not ownership while the father is alive and free from defect."

"But wealth received on account of marriage is considered to be that which has been accepted with a wife."


Remarks.—

I. The precedents above quoted and the authorities cited in and before them render all the arguments of the learned compiler against the testamentary power of Hinduos of no effect. And the Privy Council by not only upholding but also determining in the following decision that the extent of a Hindoo's testamentary power must be regulated according to the Hindoo law alone, have finally set the point at rest.

II. The late Supreme Court used to uphold the Hindoo wills excepting the devises creating perpetuities. E. G. In the case of Naba-krishna Mitter versus Harish-chander Mitter and another (finally decided on the 10th of April 1818,) the will of Gokul-chander Mitter was established, and the provisions which the testator made for his idols were particularly considered, but in spite of his most express declaration that the estate should remain undivided, a partition was ordered according to the proportions directed by him in his will. (See Con. H. L. pp. 323—328.) In Lakhyan-chander Seal and Karuñá-moyi Dási, the Court held that a devise by a Hindu creating a perpetuity was invalid.* The question of perpetuity was lastly raised (in 1857) in the suit brought by Jagai-sundari. And Sir James Colville in his judgment in that case gave effect to the rule against perpetuities. This judgment has, on appeal, been reversed by the Privy Council, and consequently, all such judgments must be taken to be virtually reversed by that Tribunal. Their decision reversing the judgments in question is as follows:—

---


It is to be remarked that the Supreme Court in deciding that case, admitted that they were not referred to any rule or authority of Hindu law which affected the question, nor had the Court been able to find any, and therefore they felt themselves constrained to apply the doctrine of English law against perpetuity.—Remark by the late Mr. Justice Lavinge. See Hyde's Reports, Vol. II. p. 94.
Sonatun Bysack, Appellant and Sree-muty Juggat-soondery
Dossy Respondent.*

On appeal from the Supreme Court at Calcutta. Ram-doss Bysauck, a Hindoo inhabitant of Dacca in Bengal, died in the year 1848, leaving large self-acquired estate consisting of movable and immovable property, situate in that province, having on the 13th of February 1848, made a will in the Bengalleee language, the translation of the greater part whereof is as follows:—

"The whole of the said properties I have obtained by my own exertions. Whatever has been produced and increased (through the means of my funds) by the labours of my two sons, namely, Sree Krishno-mongle and Sree Manik-chand Bysack the whole of that too being blended together has been applied to the banking and mercantile transactions &c. and the purchase of lands and tenures.—The acquisitions of even the sons are not held separate."

"Second—The whole of my aforesaid movable and immovable properties I have granted to Sree Sree-joon Eshshore Muddun-mohan Thakoor (the idol so called) which I have established in the house of which he is the mulk or proprietor. I am not indebted to any person. At present I have four sons that is Sree Krishno-mongle and Sree Manick-chand and Sree Sham-chand and Sree Juggur-nath Bysack are in existence. Among these my above mentioned properties shall never be divided and partitioned, and the said sons or their offspring &c. that is to say their sons and grandsons heirs in succession shall not have the power of alienating any one of my aforesaid properties by gift or sale, &c. If they do so, the same shall be inadmissible before the administrator of justice, and neither the whole of the above mentioned properties nor any part thereof shall be liable to sequestration or auction sale for the debts of the heirs and successors.—After my demise, my sons, grandsons &c. heirs shall have the power of enjoying the surplus proceeds only. Third—From the time present my eldest son Sree Krishno-mongle Bysack shall as a servant of the Eassore Thakoor control over and manage the entire estate and maintain the members of the family, and whenever and whatsoever acts and business and the ceremonies and festival &c. of

the Thakoors, or the deities shall occur, he shall perform the same according to his own discretion. Whatever may be the overplus after the deduction of the whole of the expenditures the same shall be added to my said estates and other properties or company’s papers shall be purchased or any mercantile speculation which may be advantageous shall be entered into therewith. Fourth—After the death of Sree-krishno-mongle Bysack in accordance with the provisions specified in the 3rd clause Sree Manik-chand Bysack being director and performer of the divine services and manager shall exercise his control over all. In the like manner in the event of Manik-chand’s departing this life, amongst my heirs whoever may exist and be the oldest in age he shall exercise similar control and shall perform the whole of the affairs. Fifth—Should no agreement and unanimity at all exist among my heirs then the profits of the mercantile transactions and traffics and banking and of the landed estate and rents of houses and on account of interests of various description &c., whatever money shall be received belonging to my estate from that first of all the public revenue and the charges of the interior and the expenses of the repairs of the houses being deducted whatever surplus may remain, out of that the expenses of the Idols and of the established and contingent affairs of the family and occasional acts and ceremonies and the expenses on account of the maintenance of the members of the family and connection &c. being deducted, whatever nett produce and overplus there may be, the same being adjusted annually six annas portion of the said overplus money Sree-krishno-mongle Bysack and his children and six annas share Sree Manik-chand Bysack and his children and two annas share Sree Sham-chand Bysack* and his children and two annas share Sree Jaggrur-nath Bysack* and his children shall be entitled to receive having the same apportioned. With the exception of these, none of my children shall have (upon any plea) the power of claiming any increased share.

Should they ever do so that shall be inadmissible. In consideration of the increase of the capital fortune which has been effected by the labours of Krishno-mongle and Manik-chand somewhat increased shares have been given to them. None shall have any power of raising any objection thereto. And after the demise of my sons their respective male issues down to sons and son’s sons &c. heirs in succession shall be entitled to the shares of the aforesaid amount of the surplus
profits belonging to their respective fathers, and whatever portion of
the father's share shall according to the shāstra or Hindoo law be
lawfully due to whomsover of the heirs he shall receive such portion
of the profits. Should (owing to the non-existence of heirs in the lineage
of male issue) a daughter or daughter's son be empowered to receive
any share, then such person shall receive a stipend which may be mere-
ly enough for food and clothes, and shall have no power of claiming the
share of the profits. Sixth—To whomsoever whatever Stree-dhus has been
given and to whomsoever whatever may in future be given that woman
is the rightful owner of the same, none else have any power of laying
the hands of an heir thereupon. With the exception thereof all other
whatever personal properties of gold and silver &c. there are, all the
children shall have the power of using them with discretion, and as
occasion may require, and when should they be compelled to be sepa-
rate then they shall receive them according to the above mentioned
proportions. Seventh—In the event of any property out of the whole
of my properties above enumerated (by becoming old or damaged
have the appearance of being injured or otherwise owing to any irre-
sistible cause) be likely to be come deteriorated, then the clauses above
specified shall not be a bar against making a sale or exchange of such
property."

The Lord Justice Turner.

The question in this case ultimately resolves itself, as their Lord-
ships think, into a question of the construction to be put upon a
Hindoo will; and it may not be improper to observe that, with re-
ference to the testamentary power of disposition by Hindoos, that the
extent of this power must be regulated by the Hindoo law.

The first point which arises on the construction of this will, is,
whether, according to the true intent of the will, the Idol for
whom the property is granted was intended to take absolutely. Now,
a reference to the second, third, and fifth clauses of the will lead
us to the conclusion, that although the will purports to begin with an
absolute gift in favor of the Idol, it is plain that the testator contem-
plated that there was to be some distribution of the property accord-
ing as events might turn out; and that he did not intend to give this
property absolutely to the Idol seems to their Lordships to be clear from
the directions which are contained in the third clause, that after the
expenses of the Idol are paid, the surplus shall be accumulated; and still more so from the fifth clause, by which the testator has provided for whatever surplus should remain out of the interest of the property, the expenses of the Idol being first deducted. It is plain, that the testator, looking at the expenses of the Idol, was not contemplating an absolute and entire gift in favor of the Idol.

The rights, therefore, of the Idol being thus disposed of, the question then arises, what was to become of the property, subject to the payments which were to be made for the expenses of the Idol. And here we have two divisions of the will. The testator evidently contemplated two events; one, in which the family was to continue joint and undivided, and the other, in the event of the family becoming divided. Now, with reference to the second branch of this will, the event of the family becoming divided, that state of circumstances does not appear to have arisen. There has been no division at all of this family, unless the division of the income during the few years which followed upon the death of the testator up to a short period after the death of Hurray-mohun Bysack constituted a division of the family, and their Lordships are very clearly of opinion, that the mere division of income, for the convenience probably of the different members of the family, did not amount to the division of the family.

In considering the case, therefore, we may for the present (whatever questions may hereafter arise upon it) consider this family as an undivided family; and the point for determination is, what are the rights of these parties in the property? Considering the family as a joint and undivided family. Now, in that case it is plain, that the testator contemplated that the property was to go in the male line. He says, that he has four sons; that his property shall never be divided and partitioned amongst them; and that the sons and their offspring, that is to say, their "sons and grandsons, heirs in succession," shall not have the power of alienating any of the property by deed of gift, nor shall the property be liable to sequestration for their debts. The testator, then, having intended that the property should pass from the four sons to their sons and to their grandsons, the event which happened is this, one of the sons died leaving three sons, who accordingly came in to his share, and one of those three sons afterwards died leaving no male issue. Now, what is the consequence
of that? there are directions in the will that the property is to go in
the male line to the sons and their descendants, but one of them dies
leaving no issue in the male line, and the will is silent as to what the
disposition of the property is to be in that event. It is a share of
the property of the joint family, descendable, therefore, to the heir to
whom that property would go in the absence of any provision made
by the will. The consequence, therefore, as it appears to their Lord-
ships, must be, that upon the death of Hurray-mohun, this property must
have descended, and that the one-third of one-fourth passed to Hurray-
mohun’s heir, his widow, so far as she is entitled to her widow’s state.

What their Lordships propose to do is, to declare that according to
the true construction of the will, the property granted to the Idol is
effectually granted for the benefit of the testator’s four sons and their
offspring in the male line as a joint family, subject to the performance
of acts, business, ceremonies, and festivals, and to the provisions for
maintenance in the will contained, and that the surplus income, after
answering the performance of such provisions, is in like manner well
and effectually given for the benefit of the four sons and their offspring
in the male line, as a joint family. It appearing that Krishna-mongle,
one of the sons, died, leaving three sons, and that Hurray-mohun died
leaving no male offspring, the family continuing joint up to the death
of Hurray-mohun’s, their Lordships also propose to declare, that upon
the death of Hurray-mohun, his share of the estate, subject as aforesaid,
passed to the respondent, his widow and heir, and she is entitled to
one-third of one-fourth as widow and heir. The better course would
be, to discharge the order which has been made by the Court below
and simply to make the declarations which I have suggested with a
limit and a direction to continue the maintenance (Rs. 100 per month,)
and that she shall account for what she may have received under it.

Their Lordships think that the Costs of the appeal may very pro-
perly be given out of the estate.

The following report was made by the Judicial Committee and con-
irmed by Her Majesty’s order in Council: their Lordships are of opi-
nion that it ought to be declared that, according to the true construc-
tion of the will of the testator, the whole of the testator’s movable
and immovable property was, and is, well and effectually given for
the benefit of the testator’s four sons in his will named, and their off-
spring in the male line, as a joint family, so long as the family con-
tinues joint, subject, however, to the performance of the acts, busi-
ness, ceremonies and festivals, and to the provisions for maintenance in the will contained, and that the surplus income of the property after answering such performance and provision was and is, in like manner, well and effectually given for the benefit of the four sons and their offspring in the male line. as a joint family, so long as the family continues joint. And, it appearing, that Krishna-mongie Byrack, one of the four sons, died leaving three sons, their Lordships report as their opinion, that it ought to be declared by Your Majesty, that each of the three sons became entitled to a third part of one fourth part of the property, and of the accumulations thereof. And, it appearing that Hurry-mokun Byrack, one of the three sons of Krishna-mongie Byrack, died leaving no male offspring, and that the family continued joint up to the time of his death and still continues joint; their Lordships do further report as their opinion, that it ought to be declared by Your Majesty, that upon the death of Hurry-mokun Byrack, the third part of the fourth part of the property and accumulations to which he became entitled as aforesaid passed to the respondent, Sree mutty Jugut-soondereee Dossy, as his widow and heir, and Sree mutty Jugut-soondereee Dossy accordingly became and is entitled as such widow and heir, to the third part of the fourth part of the property and accumulations. And their Lordships are further of opinion, that Sree-mutty Jugut-soondereee Dossy ought to be at liberty to apply to the Supreme Court at Calcutta as to the accounts and otherwise as she may be advised; and their Lordships are of opinion, that the order made in this cause by the Supreme Court of Calcutta, bearing date the 23rd of July, 1857, ought to be continued until further order, and their Lordships further report, that in case your Majesty should be pleased to approve of this report and to order accordingly, such order ought to be without prejudice to any question as to the rights of Sree-mutty Jugut-soondereee Dossy and when the joint family shall be separated."—The 30th of November to the 20th of December, 1859.—Moor's Indian Appeals, Vol., VII, pp. 66—90.

Ram-dhun Ghose versus Anund-chand Ghose.

Levene J.—It appears to me that it is now settled law, that a Hindoo has power to tie up his property, and prevent a partition of his estate. In Lucknow-chunder Seal and Kuroona-moyee Dossy, reported in Boulnois Vol. I, p. 210, the subject is fully discussed, and there the court held that a devise by a Hindoo creating perpetuity was invalid; but it is
to be remarked, that this court in deciding that case, admitted, that they were not referred to any rule or authority of Hindoo law which affected the question, nor had the court been able to find any, and therefore they felt themselves constrained to apply the doctrine of the English law against perpetuity. This decision was reversed on appeal by the Judicial Committee (See Sonatan Byssack versus Sree-natty Juggut-soonderee Dossy. Moor’s Indian Appeals, 66;) and although the court do not in terms say that a devise creating perpetuity is valid, yet they hold that the extent of the power of a Hindoo testator is to be regulated by the Hindoo law alone. It being admitted that there is not to be found any law prevalent or recognizable among the Hindoos restricting the power of a testator to devise his estate in perpetuity, why should the courts of law interfere to control that power, and introduce the peculiar doctrine of the English law against perpetuities as applicable to Hindoos. It is clear that this technical rule does not prevail among Hindoos and in some European countries. The Judicial Committee have declared that the Wills of Hindoos are to be regulated by the Hindoo Law alone, and therefore ought to be considered by this Court, without reference to the doctrine of the English law against perpetuities. Any doubt on the matter seems now to be put at rest by the present Chief Justice Sir Barnes Peacock in the case of Gobardhan Basak in October 1861. That case was a branch of the suit above cited, arising on the construction of the will of Ramdas Basak. The Chief Justice in giving judgment, after reviewing the authorities already mentioned, and the passages to be found in Sir. F. Macnaghten’s work (page 327,) says: “If the Hindoo law contains no rule against perpetuities, we must hold that a devise is not by that law invalid upon the ground that it tends to create a perpetuity.” There is no rule of Hindoo law which invalidates a conveyance, or a gift, inter vivos upon the ground of its creating a perpetuity. Further on the Chief Justice adds,—“If we are to give effect to the will of a Hindoo according to the rule and policy of the English law, the intentions of nearly every testator will be frustrated. The Judicial Committee seem to us to have determined the question of perpetuity. The question was raised in the case brought by Jagat-sundari. We hold that the testator had power to prevent the partition of his estates, and to give his sons or other heirs a power of dividing or disposing of the surplus proceeds only.”—Hyde’s Reports, Vol. II pp. 94—95.
Remark. It is evident from the decision preceding that where the testator directed that should any of his (male) descendants die leaving heirs in the female line only, such heirs shall be entitled to maintenance and not to his share, there the Privy Council held that if such descendant die childless leaving a widow, she will inherit his share (she not having been excluded by the testator) and from the following precedent, that, where the testator after giving his property to his sons directed that in the event of any of his sons dying without a son or son's son, his share will go to the other sons or son's sons as may then be alive, there the said tribunal ruled that although the deceased's share in the testator's property should go to the persons mentioned by the testator, yet the income which arose from the deceased's share in the interval between his death and the death of the testator must go to the widow of the latter, (she then being his legal heir, and the testator having expressed no intention with respect to the income in question.) Hence it must be concluded to be the determination of the highest Judicial Tribunal for the appeals from India that effect is to be given to whatever is directed by a Hindoo testator in his will, and that whatever is not provided for or prohibited by him is to be regulated according to the Hindoo law alone.

Privy Council.

Sreemutty Soorjea-money Dossy versus Deeno-bundoo Mullick, and others.

This was an appeal from the decree of the Supreme Court on the will of Boistom-doss Mullick.

The appeal was argued before the Right Hon. Lord Justice K. Bruce, the Right Hon. Lord Justice Turner, the Right Hon. Sir E. Ryan and the Right Hon. Sir W. Maule.

Lord Justice Turner delivered Judgment:—

Sree-mutty Soorjea-money Dossy, the appellant in this case, is the widow and personal presentative of Surroop-chander Mullick, who was one of the five sons of Boistom-doss Mullick, the testator in the case out of which the appeal arises. Boistom-doss Mullick by his will, dated the 8th of March, 1841, made the dispositions contained in that instrument. He died on the 10th of March, 1841. Surroop-chander Mullick survived him; but afterwards died on the 23th November 1857. On
the 20th of August, 1855, the appellant filed her bill in the Supreme Court of judicature at Fort William in Bengal, against the respondents who are, or represent, the four other sons of Boistom-doss Mullick, claiming to be entitled to one-fifth of the income which arose from his estate in the interval between his death and the death of Surroop-chander Mullick, and to one-fifth of the accumulations made from that income. This bill was met by demurrers for want of equity, and as to some of the parties upon other grounds also, which, however, were not insisted upon in the argument before us, upon the argument of these demurrers they were allowed by the Supreme Court, and the appeal before us is from the orders by which they were allowed. The decision having been made upon demurrers it must of course, depend upon the allegations of the bill, whether it ought to be upheld or not. (The bill was here stated.) The case therefore, which is made by this bill is that the income of the estate of Boistom-doss Mullick which accrued between the time of his death and the death of Surroop-chander Mullick, was joint estate of the five brothers and that the appellant upon the death of Surroop-chander Mullick became entitled to her share of that income. That the appellant or the appellant and her daughters would be so entitled if the income in question is not affected by the gift over, contained in the eleventh item of the will, is not attempted to be denied, but it is insisted on the part of the respondents that by virtue of the gift over the income passed with the principal to the four surviving brothers.

This, therefore, is the question which we are called upon to decide. It is a question between the estate of Surroop-chander Mullick and the parties claiming under the gift over, and as it seems to us it must depend wholly on the construction of the will. In determining that construction, what we must look to is the intention of the testator. The Hindu law, no less than the English law, points to the intention as the element by which we are to be guided in determining the effect of a testamentary disposition; nor, so far as we are aware, is there any difference between the one law and the other as to the materials from which the intention is to be collected. Primarily, the words of the will are to be considered. They convey the expression of the testator's wishes; but the meaning to be attached to them may be affected by surrounding circumstances, and where this is the case, those circumstances, no doubt, must be regarded. Amongst the
circumstances thus to be regarded is the law of the country under which the will is made, and its dispositions are to be carried out. If that law has attached to particular words a particular meaning, or to a particular disposition a particular effect, it must be assumed that the testator, in the dispositions which he has made, had regard to that meaning or to that effect, unless the language of the will or the surrounding circumstances displace that assumption.

These are, as we think, the principles by which we ought to be guided in determining the case before us; and we must first, therefore, consider what was the intention of this testator to be collected from the words of the will. Now there is here in the first item of the will, an absolute gift of one-fifth of all the testator's property to each of his five sons; but in the 11th item of the will, in the event of any of the five sons dying without a son’s son, there is a gift over to such of the other sons or sons' sons as may then be alive, upon the literal constructions of these dispositions what is given by the first item is in effect, taken away by the 11th; for, if full effect be given to the 11th item, it would rest in contingency during the life of each son, whether his share would belong to him or to his brothers or nephews, depending upon whether he should die leaving a son or a son's son. But this construction can not of course be admitted. To adopt it, would be to impute to the testator this inconsistency, that he intended at the same time to give absolutely and contingently. This can not have been his meaning. He must have intended that those to whom he gave absolutely should have some enjoyment of that which he gave to them. That enjoyment could not be less than the enjoyment of the income of their shares. It was suggested in the argument before us, that the words “the share, that he has obtained, of the immovables and movables of my estate,” would reach the income, no less than the capital. But, independently of what has been already said, this suggestion cannot, as we think, be maintained. The will of a testator must, prima facie at least, be taken to refer to that which is the subject of his disposition, the property which he has himself to give; and if he has evinced his intention to give that property, very strong and clear language must be required to countervail that intention, and subject the property which he has once given to his further disposition. No such intention can, as it appears to us, be collected from this will; and so far, therefore, as the intention of this testator
is to be gathered from the words which he has used, we think that we are safe in concluding that his intention was that his sons should, in any event, enjoy during their lives, the income of their shares of his property. It is satisfactory to find that in this respect we agree in opinion with the Court, whose judgment we are called upon to review.

Such, then being the intention of the testator, to be collected from the first and eleventh items of the will, it is next to be considered whether the other dispositions of the will evince any different intention, and it does not appear to us that they do. They seem to relate only to the mode in which the estate is to be administered, and to the burthens to which it is to be subjected. If, therefore, we are to impute to this testator any intention different from that which is to be collected from the words of his will, it must be upon the ground that there are extrinsic circumstances which disprove the expressed intention and prove the different intention. The expressed intention ought, as we conceive to prevail, unless the different intention be clearly demonstrated. We may doubt whether the testator really intended what his words import, but a Court of construction must found its conclusions upon just reasoning and not upon mere speculative doubts. What, then, are the extrinsic circumstances upon the faith of which we are called upon to conclude that it was the intention of this testator that the income of his son's shares of his property should not form part of their estates, but should go over with the principal of their shares? They are two: first, that this was a joint family, and that the sons were joint in estate; and secondly, that by the Hindoo law, where parties are joint in estate, the increment follows the principal. As to the first of these grounds, it does not seem to us at all to affect the question we are called upon to decide; for admitting the family to have been joint and the sons joint in estate, the right of any one of the co-sharers would not, under the Hindu law, pass over, upon his death, to the other co-sharers; it would be part of the estate of the deceased co-sharer, and would devolve upon his legatees, or his natural heirs. It does not, therefore, seem to us that it would follow from the sons having been joint in estate, that what was given to one was meant upon his death to go over to the others, even if the joint estate had been constituted by the will; much less so if, as the Court in India has thought, and as we think, the testator has not by his will imposed upon his sons the obligation of continuing joint in estate.
Then as to the rule of the Hindoo law, that the increment follows the principal where the parties are joint in estate. It is not necessary for us to give any opinion upon the extent and limits of this rule, and we desire not to be understood as intimating any opinion upon those points. The question in this case, as we view it, is whether the rule is properly applicable to the case before us; and we are of opinion that it is not; assuming that the testator could, if he had thought fit, have attempted to impose upon his sons the obligation to continue joint in estate; a point on which also we give no opinion. He has not, as we think, imposed that obligation, and we do not think that a rule which might well have been applicable had the obligation been validly imposed, can properly be applied in a case where the obligation has not been imposed. It was argued, indeed at the Bar, that, the testator contemplated that his sons would continue joint in estate and the learned judges of the Supreme Court seem to have so considered and thence to have deduced the inference that he meant the income of each son’s share to go over with the principal, we think, however, that the learned Judges were not justified in applying this assumption to the construction of the will. The testator must, of course, have known that his sons were joint in estate, and he has not attempted to interfere with their election whether they would continue so or not. If they had severed in estate there can be no doubt that the income of each share would have belonged to the owner of that share. Can we say that the testator did not contemplate that there might be such a severance? and if not, on what ground are we to rest, the inference which the Court has deduced? Can we say that the testator intended that if his sons continued joint in estate, the income of their shares should go over with the principal, but if they severed in estate each should take his share of the income, we think not. Such an intention might have been expressed, but the testator has not expressed it, nor, so far as we can see, does his will furnish any sufficient ground for presuming that he so intended. In the absence of expressed declaration or of what may be called necessary inference, we are of opinion that such an intention cannot be imported into the will. The effect of it would be to render the disposition of the property dependent, not upon the will of the testator, but upon the subsequent acts of his legatees. The character and possession of a legatee may well form the inducement to the gift in his favour, but
we think it is going too far to say that in the absence of express declaration or necessary inference, the extent of the gift can be measured by the legatee's continuing or not continuing to hold that character and position. Such considerations do not, as we conceive, form legitimate elements in the construction of a will. We collect from the Judgment, that the learned Judges considered that it was more consonant to the principles of the Hindoo law to hold, that the increment should go over with the principal than that it should pass to the natural heirs; but the construction which the learned Judges have put upon the will by enlargement of its terms, seems to us to be at variance, rather than in consonance, with the spirit of the Hindu law. Equality among the heirs is, as we understand, the spirit of that law. The law does not treat the principal and the increment as indistinguishable in their nature, for there is no doubt they may be severed, but it treats them as united for the purpose of dividing them equally amongst all the united family, that is all the heirs; and if that entire equality cannot, as in the present case, in consequence of the dispositions of the will, be attained, the partial attainment of it seems to us to be more in the spirit of the Hindu law, than its total rejection. Upon these grounds, we find ourselves unable to agree in the opinion of the Supreme Court and are of opinion that these demurrers ought to have been overruled; we shall, therefore, humbly recommend to her majesty that these orders be reversed, and the demurrers overruled.—Boulnois' Reports, Vol. I., pp. 287—316.
SECTION II.

EXTENT OF A CO-PARCENER'S POWER IN UNDIVIDED PROPERTY.

The authors of the law books respected in the Benares and other schools maintain that joint property may not be given away by one (parcener,) because joint or common property is mentioned in the text of Viśnusśuti—("The prohibition of giving away, is declared to be eightfold: a man shall not give joint property, nor his son, nor his wife, nor a pledge, nor all his wealth, nor a deposit, nor a thing borrowed for use, nor what he has promised to another,"') among things unalienable. Therefore, according to the two texts of Vyāsa: viz. "A single parcener may not, without the consent of the rest, make a sale or gift of the whole immovable estate, nor what is common to the family;" and "Separated kinmen, as those who are unseparated, are equal in respect of immovables; for one has not the power over the whole, to give, mortgage, or sell it;" a single parcener has not power to make a gift or other alienation.

The notion of those (authors) is that a sale or other transfer made by the will of a single parcener is invalid, all having property in the whole wealth; for they maintain a common right to the whole vested in all. But Jīmśūtā-váhana, the founder of the Bengal doctrine, maintains a several right to a part vested in each, and declares such opinion to be wrong, because there is no proof of it, and citing the above two texts of Vyāsa, he concludes saying: "It should not be alleged that, by the texts of Vyāsa, one person has not power to make a sale or other transfer of such property: for here also, as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure;" and adds: "But the texts of Vyāsa exhibiting a prohibition are intended to show a moral offence: since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." Accordingly,
(since there is not in such case a nullity of gift or alienation,) Náráda says: "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."*

Such is also the opinion of Svá-krisya Tarkálankóra and the rest. So according to the doctrine of Bengal;

Vyavastha. 352. If one or some of the parcers dispose of by gift or other transfer his or their own share or shares in joint property, the disposition is good and valid.†

there is nothing to prevent the gift or other alienation, by a parcer, of his own share even at that time. This is the opinion entertained by the author of the Dáya-bhága, who maintains a partial right to a certain portion (of the estate ascertainable by partition) vested in each individual owner.—Dá. kraj. Sang. pp. 123, 124.

* By this text of Náráda it is shown that in transactions about to be concluded by one parcer, he has the power to give or otherwise dispose of his own share, without the consent of the rest.—Dá. kraj. sang. p. 124.

It should not be said, that this text refers to a state of separation, for since the want of ownership (by one parcer in the portion allotted to another) is in that case clearly determined, the consent of either to the transactions of the other is totally out of the question. Such being the case, the text (of Vrinnámáti above cited) which enumerates common property as not being a subject of donation, must be considered merely in the light of a prohibition, and not as meant to invalidate the transfer. It is thus stated in the Smrti-sára and other books.—Ibid. pp. 124, 125.

† According to the authorities of Hindoo law, which prevails in Bengal, a member of an undivided family may give away, or otherwise alienate property, to the extent of his own share of the joint wealth: and I conceive his disposal of his property by will would be here maintained, i. e. within the limits of that province, in conformity with Jánává-váhana's doctrine, that the gift or other alienation, by an unseparated co-heir, may be an immoral act, but is not an invalid one.

Lawyers of Bengal hold that an unist gift, (a-dáya,) to which class this of undivided property belongs, is immoral, and even punishable, but not void, nor voidable; while one of the other class, termed void donation, (a-dáta,) is null, and also punishable.—Colebrooke's opinion.—See Strange's H. L. Vol. II. pp. 419, 340.

A co-parcer is prohibited from disposing of his share of joint ancestral property; and such an act, where the doctrine of the Mitá-chára prevails, (which does not recognize any several right until after partition, or the principle of 'factum valet,') would undoubtedly be illegal and invalid. But according to the Dáya-bhága, which recognizes this principle, and also a several though unascertained right in each co-parcer, even before partition, a sale or other transfer under such circumstances would be valid and binding, as far as concerned the share of the transferring party.—Mack. H. L. Vol. I. p. 5.
character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."


Q. Two brothers are living in the same house, and joint sharers of an undivided estate. One of them disposes of his unascertained share of the estate by a deed of sale to a stranger. Is such sale good against the heirs of the other? An answer to this question is required to be delivered according to the law of Bengal.

R. Such sale is good and valid.

Authorities:

I. Although the two texts of Vyasā are quoted in the Dáya-bhága:—

"A single parcener may not, without the consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family;" and "separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole to give, mortgage, or sell it," yet the author proceeds to state "It should not be alleged that by those texts one person has no power to make a sale or other transfer of such property. For here also (in the very instance of land held in common,) as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure. But the texts of Vyasā exhibiting a prohibition are intended to show a moral offence: since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer."—Dáya-bhága.

2nd. Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth.—Text of Nárada, cited in the Dáya-bhága.

3rd. The gift or other transfer of immovable property even, whether divided or undivided, is valid, because it is practicable to ascertain the respective shares at a subsequent period by the casting of lots or other means.—Commentary of Sri-krishṇa Turkálankára on the Dáya-bhága.
Sudder Dewanny Adawlut, April 8th, 1815, Boidya-nâth Banerjea, Appellant versus Shambhu-chander Banerjea, Respondent.—Macn. H. L. Vol. II. Ch. 11, Case 24, pp. 313, 314.

CASES bearing on the vyavastha No. 352. I. In the case of Bhavani-prasâd Gooho versus Musst. Tórá-máni, it was determined by the Sudder Dewanny Adawlut that, according to the Hindu law as current in Bengal, a co-parcener may dispose of, by gift or otherwise, his own undivided share of the ancestral landed property, notwithstanding he may have a daughter and a daughter's son living.—S. D. R. Vol. III. p. 188.

While in the case of Nanda-rám and others, it was determined that, according to the law as current in Behar, a gift of joint undivided property, whether real or personal, is not valid, even to the extent of the donor's own share.—S. D. A. R. Vol. III. p. 232.

II. The same doctrine was held in the case of Rám-konâi Roy and others versus Banga-chander Banerjea, (Ibid. p. 17 ;) and the subject is more fully discussed by Mr. Colebrooke, in notes to Vol. I. pp. 47 & 117.

Vyavastha: 353. While unseparated co-parceners are minors and incapable of giving their consent to an alienation, even one person, who is capable, may conclude a sale and the like, of the joint property (including others' shares,) if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father and the like, make it unavoidable.

Authority. "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes."* 

Vyavastha: 354. But where co-parceners are not incapacitated by minority and the like to give consent, and are not absent, there their consent to an alienation of the

* Vyásà as cited in the Vírava-dhângârâya; and Vrihaspáti as cited in the Ratnâkara, &c.—Vide Coleb. Dig. Vol. II. p. 189, and Mildörfer, p. 357.
joint property, though made for any of the allowable causes as above, is necessary for the validity of the transaction.

**Reason.**

For when the right of the eldest or a younger brother, if capable, to take charge of the whole family is pronounced dependant on the will of the rest, as declared by Nārāda: "Let the eldest brother, by consent, support the rest, like a father; or let a younger brother, who is capable, do so: the prosperity of the family depends on ability," — then the consent of all, who are capable of giving consent, is certainly necessary in an alienation of the joint property though it may be for the behoof of the whole family.

*Legal opinions delivered in, and admitted by, the several Courts of Judicature, and examined and approved of by Sir William Macnaghten.*

Q. There is a family, consisting of five uterine brothers, of whom two are adult, and the others under age. Is the eldest brother, in this case, competent to sell the ancestral landed estate which is in common, himself signing for his four brothers, as well as his own name in the deed of sale? And supposing him to have sold it, is the sale legal or otherwise?

R. If of the brothers some are adult and others minors, the eldest is competent to sell the paternal immovable property for the maintenance of his minor brothers, for the performance of their initiatory ceremonies and so forth, for the exequial rites of his father, and for the discharge of the debts incurred by the father; but excepting under these circumstances, he cannot sell any portion exceeding his own share. If he should have made the sale, excepting under those circumstances, it must be considered void.

Zillah Beerbhoom, August 20th, 1818.—Macn. H. L. Vol. II. Ch. II. Case 6, pp. 296, 297.

Q. There were three uterine brothers in joint possession of some ancestral landed property; one of them staid at home to conduct the

*See Coleb. D. 6, b. 61, p. 17.*
VYAVASTHĀ-DARPANA.

affairs of the family, and superintend the estate, and the other two proceeded to a foreign country to obtain office. In this case, is the brother who manages the estate, entitled to sell or mortgage the property for a certain term, while the other brothers are at a distance?

R. If two of three associated brothers, having left a brother at home to manage their joint property, proceeded to a distant country to obtain office, the managing brother may mortgage and sell the whole or a part of the undivided patrimonial property for the support of the family and religious purposes, even though there be no consent on the part of his co-parceners; in like manner as he may, without his brothers' sanction, dispose of his own share for the maintenance of his own dependants. This is conformable to the Dāya-bhāga, Dāya-krama-sangraha, and other legal authorities.

Authorities:—

"But if the family cannot be supported without selling the whole immovable and other property, even the whole may be sold or otherwise disposed of." VRĪHAT MANU:—"The support of persons who should be maintained, is the approved means of attaining heaven: but hell is the man's portion if they suffer. Therefore (let the master of a family) carefully maintain them." This is the doctrine contained in the Dāya-bhāga.

"Should even a slave make a contract (in the name of his absent master) for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it."—Dāya-krama-sangraha.

"But in time of distress, for the support of his household, and particularly for the performance of religious duties, even a single co-parcener may give, mortgage, or sell the immovable estate."

"If a debt be incurred by a slave for the support of the family of his master, it must be discharged by the master." This is the opinion of the author of the Vīvāda-chintā-manī.

Calcutta Court of Appeal, January 13th, 1617.—Macn. H. L. Vol. II. Ch. II, Case 10, pp. 300—308.
CHAPTER VII.
ON SUBTRACTION OF WHAT HAS BEEN GIVEN.

This is the fifth of the eighteen titles of (our) law: it comprises the four kinds of alienations, which are thus declared by Nárada:—"In civil affairs, the law of gift is four-fold; what may or may not be given (i.e. what is a fit or unfit gift,) and what is or is not a valid gift."—See Coleb. Dig. Vol. II., pp. 94, 95.

WHAT IS REQUIRED FOR THE VALIDITY OF A GIFT.

Vyavastha. 355. For civil purposes all that is required to render a gift valid is, the donor's having power to make such gift, and his being of sound disposing mind at the time of making the gift,* and also the donee's acceptance or reception of the thing given.

Authority. "Let the acceptance be public (a,) especially of immovable property: and delivering what may be given and has been promised, let not a wise man resume the donation."—Jánayavalkya.

(a) "Public"—i.e. in the presence of witnesses; let him so act that he may not afterwards say, 'this was not given by me, but intrusted for use.'—Coleb. Dig. Vol. II. p. 160.

"Evidence is said to consist of written proof, possession, and witnesses. In the absence of all these, one of the divine tests is prescribed."—Jánayavalkya, cited in the Mitáksará.—See Macn. H. L. Vol. I. p. 195.

"Land is conveyed by six formalities, by the assent of townsmen, of kindred, of neighbours and of heirs, and by the delivery of gold and of water." Although it is ordained by this text how to make a gift of land, yet that regards a donation for religious uses.

Vyavastha. 356. A gift by word of mouth is as good as a gift by a deed.

Reason. Inasmuch as a deed is nothing but a proof of the gift made. And as a written gift is established on proof

* The authorities &c. for this will be subsequently given.
on proof of the donor's declaration to that effect.

For civil purposes, a written contract of gift is proper; in the want of that, the donation should be attested.—*Vide* Coleb. Dig. Vol. II. p. 160.

**Vyavastha.** 357. The donor's right in the property, given, does not cease to exist unless it be accepted by the donee.

**Authority.** I. Although the donor's right may cease by relinquishment, yet as the gift is incomplete without acceptance by the donee, and as in such case it is said to be void, the donor's right again accrues. So Nárada:—"When a man desires to recover a thing which was not duly given, it is called 'subtraction of what has been given,' (and this is) a title of administrative justice." *Raghu-nandana* in *Shuddhi-tattva*.

II. When a donor makes a gift to a person (absent) with assurance that the donation will be accepted by him, the donee's right accrues thereto, but if it be known that the gift would not be accepted by the donee, the donor's right is not extinguished.—*Śrī-krishṇa's* Commentary on the *Dāya-bhāga*.

**Vyavastha.** 358. In the case of a conditional gift the right of the donor is not extinguished, nor does that of the donee accrue, unless the condition made be fulfilled.

**Vyavastha.** 359. If two (adverse) parties claim a property upon the allegation of gift, and if it be not known whose title is of prior date, then he of them is entitled (to it) who proves his possession; but if there be no possession of either of the parties, then he is entitled to it to whom the gift is proved to have been previously made.*

**Authority.** I. "A title (a) is more powerful evidence than possession unaccompanied by hereditary succession. Where there is not the least possession, there a title is not weighty."**


---

* But such is the case only, when of these two the priority is undistinguishable; but when it is ascertained which is first in point of date, and which posterior, then the simple prior title affords the stronger evidence. Or the interpretation of the text, "A title is

II. "In all other matter, the latest act shall prevail; but in the case of pledge, gift, or sale, the prior contract has the greatest force." JÁNYAVALKYA, cited in the *Mitákshará*. See Macn. H. L. Vol. I. pp. 129, 200.

**Vyavastha.**—360. The rules which respect the gift of a property equally apply to the sale or mortgage of it.

For the texts which prohibit gifts of any portion of joint property, or of the whole of a man's sole property, equally forbid the sale and mortgage of it; because such prohibition is grounded on the apprehension of the family being distressed, and the family may be distressed by sale and mortgage as well as by gift.—See St. H, L. Vol. II. p. 421.

*Legal opinions delivered in, and admitted by, the several Courts of judicature, and examined and approved of by Sir William Macnaghten.*

Q. I. An unassociated Hindu, before a large assembly of persons, verbally nominated the plaintiff as a fit subject to perform his exequial rites, and to take his entire property. In this case, is the plaintiff, after his death, entitled to succeed him?

R. I. Supposing the deceased to have appointed his relation's son (the plaintiff) to perform his exequial rites, and to have verbally made a gift in his favour; in this case, the plaintiff, if he offer up the requisite obligations to the manes of the deceased, is entitled to succeed to his property.

more powerful than possession unaccompanied by hereditary succession where there is not the least possession, there a title is not weighty;" may be as follows:—In the case of the first acquirer, if a title be proved by witnesses, it is of greater weight than possession unaccompanied by hereditary succession. Again, possession accompanied by hereditary succession, vested in the fourth descendant, is more weighty than a title proved by document; but in the case of an intermediate (claimant,) a title accompanied with even a small degree of possession is better than a title destitute of possession. This has been expressly declared by NÁRADA: "For the first, gift is a cause; for an intermediate (claimant,) possession with a title; but long and hereditary possession alone, is also a good cause." *Mitákshará*. See Macn. H. L. Vol. I. p. 219. Such is also the opinion of Rápha-śandana. See *Vyaca-kára-tattva*. 
Q. 2. If there be the deceased's brothers of the whole blood or other relations living, have they any right to share the inheritance?

R. 2. The brothers and other relations have no right to the succession, because the deceased was master of his own wealth of all sorts.

Zillah Sylhet, June 6th, 1812.—Macn. H. L. Vol. II. Ch. 8, Case 21, pp. 230, 231.

Q. 1. What are the circumstances which render a gift null and void?

R. 1. If a gift is made by a person under the influence of lust or anger, or having no title or ownership, or being grievously disordered or disturbed in mind, or intoxicated, or during madness, or in pain, through mistake or in jest, under impulse of fear, or afflicted with grief, or the like, such gift is considered null and void.

Authority:—KÂTTÂYANA: "What has been given by a man under impulse of lust, or anger, or by such as are not their own masters, or by one diseased, or deprived of virility, or inebriated, or of unsound mind, or through mistake, or in jest, may be taken back."

Q. 2. If a person, while afflicted by a sickness from which he died, made a gift of his property, being however at the time in full possession of his mental faculties, in this case, is the gift legal and valid?

R. 2. Notwithstanding the fact that the gift was made during a mortal illness, if the donor, at the time of his making the donation, was of sound mind, this gift is legal and valid.*

Q. 3. How long does the minority of the female continue?

R. 3. The minority of a female continues until she has attained fifteen complete years of age.

Zillah Dinagepore, March 26th, 1814.—Macn. H. L. Vol. II. Ch. 8, Case 12, pp. 218—220.

Q. A Hindu, having an uterine sister's son living, made over his entire estate, consisting of movable and immovable property, which he had acquired by dint of his own industry, by gift to a woman whom he

* But see note to Case 32.
kept as a concubine. At the time when the deed of gift was executed he was afflicted by illness, which terminated in his death two days afterwards. In this case, is the gift legal; or supposing it to be void and illegal, will his entire property devolve on his sister’s son?

R. Supposing the person alluded to in the question to have made over his self-acquired real and personal estate by gift to his concubine, while his uterine sister’s son was living, and presuming him to have been, at the time when the deed was executed, of sound disposing mind, in that case, the alienation is good and valid; otherwise it has no validity, and the sister’s son will inherit.

MANU says:—“He may give it away at his pleasure, or he may defray his expenses with such wealth.”

NĀRADA:—“Though generally his own master, what a man does while disturbed from his natural state of mind, the wise have declared not done, because he is not then his own master.”

Patna Court of Appeal.—Mack. H. L. Vol. II. Ch. 8, Case 39, pp. 246, 247.

Q. A person having a wife and two daughters, made a verbal gift in favour of one of them of his whole ancestral landed and other property: in this case, is the gift legal or otherwise?

A man may give his whole property to one daughter, to the exclusion of his wife and another daughter.

R. Under the above circumstances, the gift orally made by the father to one of his daughters, though when he made the gift there were his wife and another daughter living, is legal and valid.

Zillah Burdwan, April 14th, 1821.—Mack. H. L. Vol. II. Ch. 8, Case 35, p. 243.

Q. 1. A person makes a gift of some immovable property to his daughter’s sons, who are under age, and live under his control. The

* This opinion, and the one which preceded it to the like effect, must be received with some degree of qualification. It has been laid down as a general principle by Mr. Colebrooke, in his treatise on Obligations and Contracts (Book IV. § 645) that, “By the Hindoo law, a gift or gratuitous contract made by a person afflicted with an incurable distemper, is void. His equanimity being disturbed, he does not possess the self-control requisite to a valid act and legal disposal of his property.” It follows that, to uphold a gift made on a death-bed, there should be the clearest proof of sound disposing mind, to repel any presumption which might exist to the contrary.
donor keeps the property given in his own possession. Under these 
circumstances, should the gift be considered valid and binding or 
otherwise?

A gift to a minor
is valid, provided
on his coming of 
age he exercises own-
ership over it.

R. 1. Supposing the donor to have bestowed the
estate on the minor sons of his daughter, who are
under his care and protection, and that he retained
the property in his own possession during the donees' 
minority, in this case the gift is legal; but if, on the expiration of 
the donees' minority, the donor continued to retain possession of the 
property, and the donees had not in any manner exercised ownership 
over it, the gift in such case is not valid or binding.

Q. 2. Supposing the donor above-mentioned to have disposed of a
small portion of his ancestral landed property also by a gift to his 
daughter's sons without the consent of his own sons, is the gift of such
property legal, or otherwise?

A man, without
the consent of his
sons, may give a
small portion of his
property to his
daughter's sons.

R. 2. Though the donor's sons may not have con-
sented to the gift, yet he was authorised to give a
small portion of the landed estate which descended
to him, to his grandsons in the female line: conse-
quently the gift is good and valid.

Zillah 24—Pergunnahs, January 31st, 1810.—Macn. H. L. Vol. II,
Ch. 8, Case 36, pp. 243,244.

Q. 1. A family, consisting of three brothers, having come to
a division of their ancestral movable and immovable property, sepa-
rated themselves from each other, and enjoyed their respective shares.
Under these circumstances, is one of the brothers having a wife, a
daughter, a daughter's son, and a childless widow of his son, with-
out their consent, competent to give his landed estate to his two
younger brothers? If consent be necessary in this case, whose consent
is required?

R. 1. If the associated brothers, having separated
themselves from each other, live apart in the enjoy-
ment of their respective shares of the patrimony, and
one of them, during the life-times of his wife, daughter,
daughter's son, and son's childless widow, without
their consent, give his own share to his two younger
brothers, he is competent to do so, because he is master of his own share, and is by no means dependent in respect of it. This opinion is conformable to the Dáya-bhága and other authorities current in Bengal.

Authorities:—The text of Nárapa, cited in the Dáya-bhága, &c. See ante, p. 595.

Q. 2. If it were conditioned in the deed of gift, that the donees should supply the expense attendant on the donor's being carried to the river side when at the point of death, also the expense attendant on his exequial rites, the maintenance of his son's childless widow, and should discharge all his debts; and if the donees fulfilled some of the conditions, leaving others unperformed, in this case, has the deed of gift validity or otherwise?

A. conditional gift
R. 2. Supposing the donor to have conditioned in the deed of gift, that the donees should defray the necessary expenses of his being carried to the river side at the point of death, of his exequial rites, of the subsistence of his son's childless widow, and should also satisfy his debts, and the donees to have fulfilled the whole of the conditions as mentioned in the deed, then the instrument becomes binding; but not so, if the whole of the conditions are not fulfilled, in which case the deed of gift has no validity. In the case of a gift, the donor's will is predominant; and where all the conditions made by him in the deed of gift are not fulfilled by the donees, it is not followed by the creation of their property in the gift, as a conditional gift depends on the performance of its conditions, and when those are fulfilled, it becomes complete.

Authorities:—"For the will of the giver is the cause of property." Dáya-bhága. "If the subject pay not revenue, the grant, being conditional is annulled by the breach of the condition."—Viváda-bhangár-ñaca and other authorities.

Q. 3. Supposing the donor, during his illness, but in the full enjoyment of his faculties, to have executed the deed of gift; in this case, is it complete and binding?

R. 3. Under the circumstances stated, the deed of gift must be considered good and valid.
Authorities:—The following passage is cited in the *Vivāda-bhangār-mava* and other tracts; "What has been given by men agitated with fear, lust, grief, or the pain of an incurable disease, &c. must be considered as ungiven."

Zillah Beerbhoom.—Macn. H. L. Vol. II. Ch. 8, Case 15, pp. 221—223.

Q. A *Boirághí*, or religious mendicant, executed a deed of gift in favour of a person of his own order, by which he assigned over to him his entire property, movable and immovable, stipulating in the deed that on his (the donor's) death, the donee should exercise proprietary right over the property given. The donee died before the donor, who continued in possession of the property during his life-time, and some time afterwards died. Now the donee's pupil, who is by law considered as his heir, claims the property assigned. In such case, is such pupil entitled to the property in virtue of the deed drawn out in favour of his preceptor, or otherwise?

A. A gift conditioned to take effect after the death of the donor, does not go to the heir of the donee, if the latter died before the former, unless expressly stipulated.

R. Supposing the donor to have assigned his property, movable and immovable, to the mendicant (the donee) in this form, "you will derive the right of ownership over my property after my death," and the donee to have died previously to the death of the donor, the donee's property had not accrued over the thing given, and if there was no particular provision in the deed that the donee's heir should take, in case he died before the donor, the donee's pupil has no legal claim to such property.

Zillah Jungle Mehals, March 29th, 1819.—Macn. H. L. Vol. II. Ch. 8, Case, 11. p. 218.

Q. 1. A person assigns his whole property, a part of it, by a written instrument, to another, mentioning in the instrument that, during his and his wife's life-time, they should retain the property assigned in their own possession, and that, after their death, he (the assignee,) having performed their exequial rites should enjoy it; but some time afterwards he gives a part of the property so assigned to another person, and delivers the gift into the latter donee's possession. Under these circumstances, has the last gift validity, or will it be annulled on the strength of the former one?
R. 1. Supposing the person to have assigned the property in favour of a Brahmin for performing religious ceremonies, as the worship of Idols, solemnization of obsequies, and the like, and the assignee should perform the required conditions, the latter gift cannot be considered good and valid, but if he have bestowed it in the presence of the former assignee, and the latter donee have enjoyed it without molestation, then the last gift is irrevocable.

Q. 2. If the assignor, during the time he retained the property in his hand, transferred a part of it to another person by deed of gift, and put him (the latter donee) into possession of the gift, and again dispossessed him there-from. In this case, can the latter donee bring an action against the donor for the gift in virtue of the deed?

R. 2. Under the circumstances stated, the latter donee is authorised to sue the donor to obtain possession of the gift, and the donor is bound to satisfy his claim.

Q. 3. The former assignee, on the death of the assignor, having performed the acts required in the deed of assignment, claims the property occupied by the latter donee; in this case, is the assignee entitled to such property?

R. 3. Supposing the assignor to have bestowed immovable or other property which he had in his own possession to another person, and to have put the donee into possession of it, then, on the death of the assignor, the assignee cannot legally sue the latter donee for the property. Should the assignee have fulfilled the injunctions prescribed in the deed, he is entitled to the assignor's whole property, excepting that part which was given to the latter donee.

Q. 4. A person having made a gift of his real and personal property to another, executed a deed to that effect. In this case, is he (the donor) competent to retain the gift in his own possession for the period of fifteen or twenty years?

A gift cannot be retained in the hands of the donor, in his own possession. This is a received maxim.

Q. A widow of the fourth class who had no son, having reserved some immovable property left by her husband for her own maintenance, disposed of the remainder by a deed of gift in favour of her husband's brother's sons, her own daughter's son being present at the time, and not objecting. Fifteen years after the gift, she sold the property (which had been already given) to a stranger, and the deed of sale was attested by her daughter's son. In this case, which of these transactions should be upheld?

B. It may be inferred that the donor's daughter's son consented to the gift, from his making no objection at the time, or during the period of fifteen years subsequently to the gift. The gift, therefore, should be considered valid and binding. The sale which was witnessed by the daughter's son cannot be considered complete, for there existed no right in the widow over the property sold. Both gift and sale are the means of the extinction of property. Here the first act, in other words, the gift, shall prevail.

Authorities:—

The following are the texts of Nārada, Kātyāyana, and Vr̥hasthāpati:—"If a man, having bailed or pledged a thing to one person, pledge or sell it to another, the first act shall prevail." "In all other contested matters, the latest act shall prevail; but in the case of a pledge, a gift, or a sale, the prior contract has the greatest force." *Macn. H. L. Vol. II. Ch. II. Case 25, p. 315.*

Q. A landed proprietor sold his estate to the plaintiff's father, and he executed a deed of sale for the same in the purchaser's favour; but, when the sale was contracted, the estate was under a mortgage, on which account the seller was unable to deliver the property sold into the purchaser's possession. Five years after the transaction, the vendor sold the same estate to the defendant, and, having redeemed the mortgage with the purchase money, delivered it to the defendant.
VYAVASTHA-DARPANA.

(the second vendee,) who is still in possession of the estate. In this case, will the property in question revert to the first purchaser, or will it remain with the second one?

A sale of mortgaged property is valid, and becomes complete on discharging the incumbrance.

R. If a person having sold his lands to one individual, again sell the same property to another person, the first purchaser is entitled to the property. This is consistent with the general opinion. *

Zillah Chittagong, July 30th, 1813. Mogan Das, versus Madanmohan and others.—Macn. H. L. Vol. II. Ch. II. Case II. p. 303.

Case bearing on the vyavastha No. 355.

It has been held by Messrs. Colebrooke and Stewart, Judges of the Sudder Dewanny Adawlut, that, according to the law as current in Mithilâ, a verbal mortgage of immovable property for a period of ten years is valid, provided such property remain in the hands of the mortgagor.—Shâm Singh versus Must. Umrâoti. 28th July 1813. S. D. A. Rep. Vol. II. p. 74.

Cases bearing on the vyavastha No. 355.

I. A verbal gift by a Hindu, who was upwards of eighteen years of age, made the day before his death, he being at the time in full possession of his senses, is held to be valid.—Gosain-chand Kabirôj versus Must. Krishnâ-manî and another. 8th July 1836. S. D. A. Rep. Vol. VI. p. 77.

II. According to the law as current in Mithilâ, a verbal gift of immovable property is invalid, where the donee has never been in the possession of property.†—Ibid.

* In all other contested matters, the latest act shall prevail; but, in the case of a pledge, a gift, or a sale, the prior contract has the greatest force.” It may be objected that, according to this doctrine, the first sale should be avoided by the mortgage, from its having been made previously to the sale. The meaning of the text, however, is that where a person mortgages his property for a valuable consideration to one person, and mortgages the same property to another, the first mortgage shall hold good; but in a case where a man mortgages his property, and subsequently makes a sale of the same property, the latest contract will have superior force, on the satisfaction of the debt for which the property was mortgaged: in other words, that a prior pledge shall avoid a subsequent pledge; not that a prior pledge shall avoid a subsequent gift or subsequent sale.

† In the matter of verbal gift, &c., there is no difference between the Hindu law current in Mithilâ and that in Bengal.
SECTION 1.—ON UNFIT GIFTS.

(That is on gifts and other transfers of property inalienable.)

Inalienable things enumerated by Vrihaspati, Kâtyâyana, Nârada, and Daksha, are as follows:—

Vrihaspati:—"The prohibition of giving away is declared to be eight-fold: a man shall not give joint property, nor his son, nor his wife, nor a pledge, nor all his wealth, nor a deposit, nor a thing borrowed for use, nor what he has promised to another."—Coleb. Dig. Vol. II. p. 98.

Kâtyâyana:—"A wife, or a son, or the whole of a man's estate shall not be given away or sold without the assent of the persons interested (a) he must keep them himself; but, in extreme necessity, he may give or sell them; otherwise, he must attempt to do no such thing: this has been settled in codes of law."—Ibid. p. 105.

(a) "Without the assent of the persons interested,"—that is, of son, wife, kinsmen, and so forth.—Ibid. p. 106.

Nârada:—"What is bailed for delivery, what is lent for use, a pledge, joint property, a deposit, a son, a wife, and the whole estate of a man who has issue living, the sages have declared inalienable even by a man oppressed with grievous calamities, and (of course) what has been promised to another."—Ibid. p. 97.

Nârada, forbidding (such a) gift or sale even in extreme distress would contradict Kâtyâyana. Therefore, in the utmost distress, a son and the rest may be given away, with the assent of the persons interested: but even in such circumstances, the gift may not be made without their assent. Such is the demonstrated rule.—Ibid. p. 106.

A son is also given for the purpose of adoption; (this being done) as an act of duty to relieve the adoptor's distress arising from the want of male issue, no penalty is incurred.

* In this text of Kâtyâyana the gift or sale of a son or wife, without the assent of the parties interested, and without extreme necessity, is forbidden: it is not said that the gift or sale is void.—Coleb. Dig. Vol. II, p. 105.
The assent (required) is (found in) the want of opposition; for it is a rule that not to forbid is to assent.—Coleb. Dig. Vol. II. p. 106.

Daksha:—"Joint property, deposits for use, bailments in the form called Nyása, pledges, a wife, her property, deposits for delivery, bailment (in general,) and the whole of a man's estate, if he have issue alive,† are things which the learned have declared inalienable, even in times of distress: the man who gives them away is a fool, and must expiate (the sin) by penance."—Coleb. Dig. Vol. II. p. 106.

Here nine things are declared inalienable; but a son is not mentioned: including a son, ten things (and persons) may not be given. Vrihaspati declares the prohibition of giving away to be eight-fold; though deposits may be considered as comprehended in this text under the term "nyása," still female property is not included in that text; and what is promised, not included by Nārada (in the number of eight unalienable things,) is included in that number by Vrihaspati. On this mutual contradiction Chandeshvara remarks: "It is not implied, that the enumeration of inalienable things, as delivered by other sages, is curtailed by what each himself declares." Consequently where nine things are (declared) inalienable, it is true of eight; and if ten or eleven things be so, the same is affirmed of nine or eight. Coleb. Dig. Vol. II. p. 110.

Although it is said by Daksha that Strī-dhan is inalienable even in the time of distress, yet according to the texts of the other sages, it has been established that the husband is competent to take his wife's Strī-dhan and to make a sale or the like of the same, in the time of distress. See the Chapter treating of Strī-dhan.

* Therefore the gift of a son under the age of five years may be valid; and it appears that donations may have force even without the assent (of the persons interested.) Coleb. Dig. Vol. II. p. 106.

The gift of a son should, however, be according to the text of Vāishnava:—"A son formed of seminal fluids and of blood proceeds from his father and mother, as an effect from its cause: both parents have power (for just reasons,) to give, to sell, or to desert him, but let no man give or accept an only son, since he must remain to raise up a progeny for (the obsequies of) ancestors. Nor let a woman give or accept a son, unless with the assent of her lord." See Coleb. Dig. Vol. II. p. 108. See also the chapter treating of adoption.

† "If there be issue alive."—if there be a son, grandson, or great-grandson, who have equal dominion (over the property,) it is ordained by Nārada and many other sages that the whole of a man's estate may not be given away, and if any person, though he have issue living, do give away his whole estate, he shall be fined.—Coleb. Dig. Vol. II. p. 111.
Remark. The lawyers of Bengal hold that, of things inalienable, the alienation of some of them is invalid, and that of the rest is valid. That is to say, gifts unfit by reason of the want of proprietary right, are necessarily null and void; but that gifts unfit, because they are prohibited by general rules, may be valid, though the alienation thereof is immoral or moral according to special circumstances.* They are as follows:

Vyavastha: 361. The alienation of deposits for delivery or use, bailments in the form of nyāsa, pledges, things borrowed for use, and without a legal cause the alienation of joint property exceeding one's own share, and of Strī-dhan without distress, are invalid.

Because of the want of proprietary right.

Authority. I. Manu:—"A contract made by a person intoxicated, or insane, or grievously disordered, or wholly dependent, by an infant, or a decrepit old man, or by a person without authority, is utterly null."—Coleb. Dig. Vol. II. p. 198.

II. Jānyavalkya:—"A contract made by a person intoxicated or insane, or grievously disordered, or disabled, by an infant, or a man agitated by fear or the like, or by a person without authority, is utterly null."—Ibid.

Vyavastha: 362. The gratuitous gift of a wife and son without (their) opposition, and the gratuitous alienation of the whole of one's own share in the joint property, and of his sole estate if he have issue alive, are valid but immoral.

* Mr. Colebrooke says:—"Lawyers of Bengal hold, that an unfit gift, (side, to which class this of undivided property belongs, is immoral, and even punishable, but not void, nor voidable. (See Str. H. L. Vol. II. p. 420.) There appears, however, exceptions to this rule. It has been shown that alienation by a man, of the property in which he has no proprietary right:—such as deposits, &c. which are comprehended in the class of gifts unfit, is necessarily void: this has been maintained by the learned gentleman himself, (See Str. H. L. Vol. II. p. 421) while on the other hand the alienation of one's sole property or his share in the joint estate, for legal causes and of his wife's Strī-dhan in distress, is held to be both moral and valid.
SECTION II.—ON FIT GIFTS.

(That is, on gifts or other transfers of property alienable.)

These are enumerated by Vrihaspati:—"A man may give what remains after the food and clothing of his family: the giver of more may taste honey at first, but shall afterwards find it poison. Of houses and land, acquired by any of the seven modes of acquisition, whatever is given away, should be delivered, distinguishing (land) as (it was) left by the father, or gained by the occupier himself. At his pleasure he may give what himself acquired. A pledge must be disposed of by the law of pledges, (or subject to redemption.) But of property acquired by marriage, or inherited from ancestors, the whole ought not to be alienated. (But) if what is acquired by marriage, what has descended from an ancestor, or what has been gained by valour, be given with the assent of the wife, of the co-heirs, or of the king, the gift has validity."—Coleb. Dig. Vol. II. p. 181.

Kātyāyana declares what may and what may not be given:—
"Except his whole estate and his dwelling house, what remains after the food and clothing of his family, a man may give away,† whatever it be; otherwise it may not be given."—Ibid. p. 133.

Therefore,—

Vyavastha: 364. The gift or other alienation of that portion of property which may remain after the food and clothing of the family, is neither invalid nor immoral.

Vyavastha: 365. The alienation of any portion of one's property, thereby distressing his family, is immoral though valid.

Reason. Because in such case it is inalienable, and the maintenance of the family is an indispensable obligation.

* There are seven virtuous means of acquiring property: succession, occupancy or donation, and purchase or exchange, conquest, lending at interest, husbandry or commerce and acceptance of presents from respectable men.—Manu.

† Consequently the whole of his own property (except his dwelling house) that remains after the food and clothing of his family, a man may give away; such will be the sense of the text. "The whole" is here mentioned to show that moveables and immovables are not distinguished. "His own;" by this term, deposits and the like are excepted.—Coleb. Dig. Vol. II. p. 134.
VYAVASTHÁ-DARPANA.

Vyavastha. 366. But if the calamity of the family cannot be got over, or if the family cannot be supported, or indispensable duties cannot be performed without alienation of the whole property, even that should be done by the occupier, and, if he be absent, by any person belonging to the family.


II. But if the family cannot be supported without selling the whole immovable or other property, even the whole may be sold or otherwise disposed of.—Dā. bhd. p. 30.

Vyavastha. 367. If, by reason of being unable to preserve or manage, or of any other justifiable cause, a woman make over the property inherited by her to the then next or superior reversioner, the transfer is good and valid. See the Vyavasthā No, 43, ante, p. 58.

Vyavastha. 368. Wherever a long existing usage is prevalent, there the making over of property in conformity to that usage to a certain heir, to the disinherison of the rest, assumes the character of a fit gift and is held to be a valid one.

Reason. For usage or custom is a branch of the Hindoo law, which, wherever it obtains, supersedes the general maxims of the law. See the Chapter treating of usage. Ante, p. 314 et sequre.

Vyavastha. 369. A rāj or principality appears to be indivisible according to the immemorial custom of the country; the eldest succeeds to the entire rāj; unless he be unfit, when the next qualified brother would succeed.*

* Jagn-nādīk and Kripā-rām pāpātī assigned six reasons regarding validity of the gift of the entire zamindarī of Nudda by the reigning rājā to his eldest son. The last of which reasons is that "a principality may lawfully and properly be given to an eldest son." Sir William Macnaghten says: "The last reason assigned is doubtless correct, and taking a zamindarī in the light of a principality, is applicable, and would alone have sufficed to legalise the transaction. A principality has indeed been enumerated among things imperturbable."—Macn. H. L. Vol. I. p. 7. See ante, p. 556. Note.
Authority. I. This is manifest from the words of Bālmilī put in the mouth of Mantharā when addressing (queen) Kōkṣet. "It is not that all the sons of a king enjoy the kingdom: one amongst many sons is vested with the rāj, (for) if all the sons be in (possession of) the rāj, great disorder shall ensue; therefore, spotless beauty, kings give their kingdoms (respectively) to their eldest or some other well qualified of their sons, which eldest sons (respectively) deliver their kingdoms entire, to their eldest sons, not to their own brethren. Thus your son shall not have much reverence, but as a helpless one, shall be destitute of enjoyment, nor shall be longer reckoned a member of the ever-enduring royal race."—Rāmāyana, Ajodhyā-kāṣṭa.

"But, of many sons, one is consecrated to the empire. If all were kings, it would be the highest injury. Therefore, spotless beauty, kings commit the affairs of government to their eldest sons, or to others more virtuous. Doubtless they consecrate to the empire the eldest by birth or excellence, and never commit the entire kingdom to his brothers." After commenting on these texts the author of the Vivāda-bhāngārṇava puts this question; "May not the middlemost, or other son, be inaugurated?" and himself decides it thus:—"Since the eldest son, being first, cannot be passed over, his consecration is directed; but if he be vicious, another son, who is virtuous, may obtain the kingdom."—Dig. Vol. II. pp. 123,124.

II. "Among all the sons of Iksuvaṇa, the first born is king: thou, son of Raguṇa, art first born, and shalt this day be consecrated to the empire. This prescriptive law in thy family thou canst not now reject." Rāmāyana, Ajodhyā-kāṣṭa.—Ibid. 119.

In the succession to principalities and large landed possessions, long established Kutāchār will have the effect of law, and convey the property to one son to the exclusion of the rest. It has been stated by Mr. Colebrooke, in a note to the Digest (Vol. II. p. 119,) that the great possessions, called seinindarees in official language, are considered by modern Hindoo lawyers as tributary principalities.—Macn. H. L. Vol. I. p. 18.

This custom by which the succession to landed estates invariably devolves on a single heir, without a division of the property, has been recognised and declared legal by Regulation 10 of 1800, a formal enactment was not perhaps necessary as far as the Hindoo law is concerned, that law itself providing for exception to its general rules, declaring that particular customs shall supersede the general law.—Note to the Case of Rāj kumār- Bālādeb Singh versus Rājā Ruder Singh Bābādur. February 27th, 1846. S. D. A. R. Vol. VI. p. 41.
Some, remarking that the kingdom of Ajoddhaya was not divided, hold that kingdoms are indivisible on the authority of custom, although it be not expressly declared in the text of any sage.*—Coleb. Dig. Vol. II. p. 119.

III. When Pāṇḍu retired to the forest, his kingdom, governed by Dhrita-rākṣita, fell under the domination of Durjodhana; but, recovered by Bhima and his brothers, was enjoyed by Jūdhishṭhira, and not shared by his brethren.—Ibid.

Therefore a kingdom is indivisible.—Ibid. p. 120.

IV. Even now it is seen in practice, that entire kingdoms are severally held by one prince, although he have brothers.*—Ibid. p. 119.

V. If a king give the whole of his dominions to his eldest son qualified for the empire, although his other sons be void of offence, the gift is valid, provided it be the act of a prince neither insane nor otherwise disqualified; for it is done in conformity with the practice of former kings (as shown in sacred and popular histories) without offence on the part of the other sons or of their father. Thus Dāsharatha intended to commit his kingdom to Rāma, in the presence of Vāshishthā and many other sages, and in the presence of the citizens at large, although Bārāta and his other sons were faultless; but afterwards, excluding Rāma and the rest, he gave his kingdom to Bārāta, as a boon to Koikei.—Ibid. pp. 118, 119.

Q. Can a person, having a son, a daughter, and a wife, sell his whole ancestral landed estate to a stranger?

R. If a father, having a son and other heirs, sell his entire patrimonial immovable property without their consent, or without extreme necessity, such as to render the sale necessary for the purpose of the family support, the sale is void and illegal; but under such necessity the act is allowable. This opinion is conformable to the Vivaśa-chintamani, Vivaśa-ratnakara, Vivaśa-chandra, and other authorities.

Authorities:

Kātyāyana:—"A wife or a son, or the whole of a man's estate shall not be given away or sold without the assent of the persons in-

* This digression is not altogether misplaced; for the great possessions, called Zamindaries in official language, are considered by modern Hindoo lawyers as tributary principalities.—Colebrooke's Note. Dig. Vol. II. p. 119.
terested; he must keep them himself; but in extreme necessity, he
may give or sell them with their assent; otherwise he must attempt
no such thing: this has been settled in codes of law. Except his
whole estate and his dwelling-house, what, remains after the food and
clothing of his family, a man may give away, whatever it be, whether
fixed or movable; otherwise it may not be given."

If the sons and the family cannot be supported without selling the
whole real estate, or if the father, reserving such portion as may suffice
for the maintenance of the family, sell the entire patrimonial landed
estate, the sale is good and legal.

_Dáya-bhága:_ "But if the family cannot be supported without sel-
ing the whole immovable and other property, even the whole may be
sold, or otherwise disposed of."

Zillah Nuddea. May 12th. 1817.—Macn. H. L. Vol. II. Ch. II.
Case 22, p. 312.

See also Macn. H. L. Vol. II. Ch. 8. Cases 4, 9, and 44; and Ch. II.
Cases 2, 9, and 21. _Ante_, pp. 60, 61, 62, 63, 68, 575, 576 & 615.

_Cases_ bearing on the _vyavasthás_ Nos. 366, 367.

I. _Bishwa-náth Dutt_ versus _Durgá-prasád Roy_
Notes, No. 34. _Ante_, p. 409.

II. _Rám-chander Sarmá_ versus _Gangá-gobind Banerjea_ 11th. Feb-

_Cases_ bearing on the _vyavasthá_ No. 366.

I. In the case of _Bir Indra-náróyaṇ Choudhuri_ and
another versus _Satya-bhámá Debyá_ and another, it
was held that by the Hindoo law, as current in Ben-
gal, the gift by a widow of the property derived from her late hus-
bond to her daughter (being the next in succession) and her daughter’s
husband is valid*. 6th of August 1835.—S. D. A. R. Vol. VI, p. 86.

II. In the case of _Jádu-maṇi Debi_ versus _Sárodá-prosanna Mooker-
jea_ and others, it was held by the Supreme Court that a conveyance
for good consideration by a Hindoo female of her share in the joint
family estate, inherited by her from her son, with the consent and in
favour of the next heir then living, is a disposition permitted by Hindoo

SECTION II.—ON IRREVOCABLE OR VALID GIFTS.

Vyavastha. 376. What is paid as wages (a,) as the price of goods, as a nuptial gift or gratuity, for pleasure (b,) as an acknowledgment to a benefactor (c,) from affection, favour, or friendship (d,) or as a present through regard to a worthy man (e,) is irrevocable.

Authority. I. Things once delivered on the following eight accounts cannot be resumed, as wages, for pleasure, as the price of the goods sold, as a nuptial gift to a bride (or her family,) as an acknowledgment to a benefactor, as a present to a worthy man, from natural affection, or from friendship.—VRIHASPATI. Coleb. Dig. Vol. II. p. 174.

II. They who know the law of gifts declare that things once delivered as the price of goods sold, as wages, for pleasure, from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride (or her family,) and through regard, cannot be resumed.—NÁRADA.—Ibid. p. 175.

(a) "As wages:"—as a recompense paid for work performed. Revenue is paid to the king as wages, or as the price of the produce of land, because he has an interest in the soil. KÁTYÁYAÑA describes wages as follows:—"Where a reward, offered for the recovery of property missing, is received for discovering it, the gift is considered (a payment of) wages.—Ibid. pp. 174, 177, 178.

(b) "For pleasure:"—for the gratification of seeing dancers, and the like. What is given to a wife on the second marriage of her lord, appears to be given for pleasure, for the former wife's consent to the husband's espousal of another affords him pleasure. This and other cases may be understood according to circumstances: in all instances pleasure, (and gratification,) may be supposed (to influence the gift.) Ibid. pp. 174, 177.

(c) "An acknowledgment to a benefactor:"—in return for benefits received: so KÁTYÁYAÑA:—"What is received for relieving a man from apprehension of danger, for saving him from actual peril, or for promoting a matter in which he was interested, is an acknowledgment to a benefactor.—Ibid. pp. 174, 178.
(d) "From affection":—towards sons and the rest; "from favour:"—
to servants and the rest; "from kindness:"—to a friend.

(e) "Worthy"—may be interpreted the state of worthiness; what
is given to a stranger endued therewith, though no benefit should have
been received from him, (is a present to a worthy man,) or, a present
to a worthy man may intend a gift for religious purposes, not mention-
ed by NÁRADA, because he had promised civil donations. ("In civil
affairs, the law of gift is four-fold.") It should not be objected, that
presents for religious purposes are (subject to) civil cognizance; else
how could the king compel delivery? The gift alone is religious;
delivery is a matter of civil (cognition.) Then (the law concerning)
what may not be given and the like, should be admitted in the case of
gifts for religious purposes?—Coleb. Dig. Vol. II. p. 175.

Vyavastha. 377. In the case of wages, should an exces-
sive amount be promised by a man in extreme
distress, it should not be delivered.—Ibid. p. 79.

"But if the reward be thus offered: 'I will give all my property to
him who saves me from this danger to which my life is exposed,' it
shall not be so (given.)"—Ibid. p. 178.

Danger of life is mentioned, to denote extreme distress.—Ibid. p. 179.

Vyavastha. 378. In fact, should a man, during a conflag-
ration, or during the sickness of his son, or
the like, promise all his wealth to the person who shall save
him, that promise is not valid; but it is reasonable that the
gift should be great in proportion to the benefit conferred.
Ibid. p. 179.

Vyavastha. 379. It must also be considered that, the re-
sumption of an excessive gift being shown where
it has been promised but not delivered, the donor has an equal
right to recover it, even though it have been actually deliver-
ed.—Ibid. p. 179.

If any litigant party, being distressed, should in any instance, pro-
mise, or actually give, an excessive fee to an umpire, the excess above
the sixth part of the value in dispute may be resumed; deducting a
sixth part (of that value) from the amount promised (or paid,) he may recover the remainder even through the intervention of the king. *Ibid.* p. 179.

This is intimated by *Jmāta-nāhana* (in the *Dāya-bhāga,* and *Raghu-

*nandana* who in explaining the text of *Kātyāyana* respecting wealth

acquired by science,—"What has been received as a gift from a pupil,

as a gratuity for the performance of a sacrifice, as a fee for answering

a question in casuistry, for ascertaining a doubtful point of law,"—men-

tion the sixth part or the like, which is received for well ascertaining

(the point referred by) litigant parties, who apply for an explanation


The mention of these irrevocable gifts is intended to show the mo-

tive of donation. In these gifts it should not be distinguished whe-

ther the property might, or might not, be given away: but pleasure,

as a motive of donation, must be understood, with an exception to

lust and the like.—Coleb. Dig. Vol. II. p. 177.
SECTION IV.—ON VOID GIFTS.

Vyavastha. 380. What has been given by a man agitated with fear, anger, lust, grief, or by (the pain of) an incurable disease;* by one intoxicated, insane, diseased, or by one not in the natural state of mind, or as a bribe, or in jest or in sport, or by mistake, or through any fraudulent practice, or by a minor, an idiot, a person not his own master, by an outcast, or in consideration of work unperformed, or to a bad man mistaken for a good one, or by one extremely old, grievously disordered, or without authority, or in excessive joy, or for an illegal act, is void or ungiven.

Authority. I. What has been given by men agitated with fear, anger, lust, grief; or (the pain of) an incurable disease (a,) or as a bribe (b,) or in jest (c,) or by mistake (d,) or through any fraudulent practice (e,) must be considered as ungiven; so must any thing given by a minor (f,) an idiot (g,) a (slave or other) person not his own master (h,) a diseased man (i,) one insane (j,) or intoxicated, or by an outcast (k,) or inconsideration of work unperformed (l,)—Nárada. Vide Coleb. Dig. Vol. II. p. 181.

II. Though (generally) his own master, what a man does while disturbed from his natural state (of mind,) the wise have declared not done, because he is not (then) his own master.—Nárada. Ibid. pp. 182. 183.

* Men agitated with fear, anger, lust, grief, or pain, are five (whose minds are) disturbed from their natural state; as is remarked by Vāchaspiti Mira, Chaṇḍžiṣhvara, Vāchaspiti Bhattachāryya, and Bhasadeva.—Coleb. Dig. Vol. II. p. 182.

In cases of fear and compulsion, the man is not guided solely by his own will, but solely by the will of another. If, terrified by another, he give his whole estate to any person for relieving him from apprehensions, his mind is not in its natural state. In the case of a man agitated by anger or the like, he is not a person who discriminates what may and may not be done. But after recovering tranquility, if he give any thing in the form of a recompense, the donation is valid.—Coleb. Dig. Vol. II. p. 183.

What is extorted by force is likewise considered as ungiven, according to the text:—What is given by force, what is by force enjoyed, by force caused to be written; and all other things done by force, Manu has pronounced void.—Coleb. Dig. Vol. II. p. 201.
III. But what shall be given ignorantly to a bad man, called a
good one (nā) or for an illegal act, must be considered as ungiven.

(a) “Agitated by pain;”—afflicted with an incurable disease: so
Vīyāneshvara. Others explain “agitated by pain,”—afflicted with a
distemper which destroys sense, as a complicated marasmus or the
like.—Ibid. pp. 191, 192.

(b) “Bribe;”—is thus described by Kātyāyana: “Whatever is re-
ceived for giving information of a thief or a robber, of a man violating
the rules of his class, or of an adulterer, for producing a man of de-
praved manners (ready to commit thefts or other crimes,) or for pro-
curing a man to give false testimony, that is all denominated (bribe)
or (given on illegal consideration:) the giver shall not be fined; but an
arbitrator or intermediate person, (receiving a bribe,) shall be held
guilty.”—Ibid. p. 194.

(c) “In jest;”—by words expressing donation, but without the in-
tention of giving.—Ibid. p. 181.

What is given as a bribe, or in jest, is a mere delivery, or a gift in
words only; there is no volition vesting property in another. Ibid. p. 183.

(d) “By mistake;”—delivering to one what was to be delivered to
another, or delivering one thing instead of another which was to be
given; as gold instead of silver which should have been given, or any
thing delivered to a Shūdra instead of a Brāhmaṇa to whom it should
have been given, the gold and the Shūdra are not (the thing and the
person) really intended, namely silver and Brāhmaṇa. Ibid. pp. 181, 183.

(e) “Through any fraudulent practice;”—inadvertently, and the
like: so Vāchaspati, Bhavadeva and the author of the Prakāsha.
Ibid. p. 181.

(f) “A minor;”—one who, from nonage, is unable to decide what
should or should not be done.—Ibid.

(g) “Idiot;”—naturally incapable of distinguishing right from
wrong: a fool. According to its etymology from the verb muḥ (to e
stupid or want sense,) murka signifies stupid or foolish; and thence
may signify unknowing: consequently, where a man gives any thing
ignorantly, the gift is void.—Ibid. pp. 181—187.
(b) "A person not his own master;"—a son, slave, or the like: So Váchaspati Misra, Chandeshvara, Bhavadeva, and Váchaspati Bhatátáchárnya. By which it is denoted, that their meaning is this: a gift made by a person technically denominated not his own master,* is void.—Ibid. p. 189.

* Persons technically denominated not their own masters are as follows:—"While the elder brother lives, the rest are not dependent; (but) seniority is founded both on virtue and on age: all subjects are dependent, the king alone is free: a pupil is declared dependent; freedom belongs to the teacher: all wives, sons, slaves, and unmarried girls are dependent; and a householder is not uncontrolled in regard to what has descended from an ancestor."—Coleb. Dig. Vol. II. p. 115.

If there be an unseparated brother, senior by age and virtue, and occupied in maintaining the whole family, a younger brother has no power to give or sell either share of the whole joint estate; therefore the gift or sale is void; but, a contract made by such an elder brother is valid for both shares, according to the text: "but at a time of distress, for the support of his household, and particularly for the performance of religious duties, even a single coparcener may give, mortgage, or sell the immovable estate." However, the younger brother has power over his own acquired property.—Coleb. Dig. Vol. II. p. 189.

"All subjects are dependent;"—land or the like given by subjects with the king's consent is a valid gift; so, if a corroy be granted by a wealthy man, the gift of it, with his assent, is valid.—Ibid. p. 189.

"A pupil is declared dependent;"—The pupil is subject to control, because the teacher shares the fruit of his actions, according to the text: "Let the teacher instruct him giving him maintenance in his house; what he earns by his own labour during that period shall belong to the teacher," and what a pupil who is maintained by his teacher gives to another without the assent of his instructor, is not legal, for he is dependent in regard to all acts generally.—Ibid. p. 189.

According to the text:—"Three persons, a wife, a son, and a slave, are declared by law to have (in general) no wealth exclusively their own; the wealth which they may earn is (regularly) acquired for the man to whom they belong." Wives and the rest being dependent in all actions generally, even the gift of female property and the like, without the assent of the husband or master, is not valid. Persons not their own master, are sons, slaves, and the like: this supposes property belonging to the son, slave, and the rest; for the gift of that which belongs to the father or master is void, because it is made without ownership, (See Coleb. Dig. Vol. II. pp. 189, 190;) and because Nárádá says: "a gift or sale made by any other than the true owner, must, by a settled rule, be considered, in judicial proceedings, as not made." However, women are independent with regard to the gifts of their affectionate kindred; according to the text:—"The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of moveables;" and according to the maxim, "that the sense of the law ascertained in one instance, is applicable in others also, provided there be no impediment." The gift or other disposition of the property acquired by the son is moral if made with the father's consent, otherwise immoral; in the same manner as partition becomes lawful with the consent of the mother, though it was declared unlawful while the mother lives.
(i) "A diseased man:"—afflicted with any disease: so the author ofמיתקן. But others explain "a diseased man," one whose sense has been destroyed, without a distemper, as the complicated marasmus and the like, and without intoxication, but by swallowing pernicious drugs or the like. "A diseased man" is described by Jagan-nātha as one affected with disease and the like, or impelled by hunger and so forth.—See Coleb. Dig. Vol. II. pp. 191, 192, 197.

(j) "One insane:"—not in his natural state.—Ibid. p. 191.

(k) "An outcast:"—banished for (heinous) crimes. According toHalāyudha and others, it should be said, that a man banished from the family for the murder of the king, or other heinous crime perpetrated by him, has no right to give away property belonging to that family, because he is not his own master. But when a banished man gives what he himself has acquired (after his expulsion,) the gift is valid.—See Ibid. pp. 182 & 198.

(l) "In consideration of work unperformed:"—What a man gives, deceived by the promise of the donee, "I will execute this business for thee, give me a reward," is not a valid gift, if the work be unperformed.—Ibid. p. 191.

Authority. IV. What is given by a person in wrath, or (excessive) joy,* or through inadvertence, or during disease, minority, or madness, or under the impulse of terror, or by one intoxicated or extremely old (m,) or by an outcast or an idiot, or by a man afflicted with grief or with pain, or what is given in sport (n;) all this is declared ungiven or void. If any thing be given for a consideration unperformed (l,) or to a bad man mistaken for a good one (p;) or for any illegal act, the owner may take back.†—Vrīha-pati.

(m) "Extremely old:"—one whose organs of sense are impaired; so Mīśra.—Coleb. Dig. Vol. II. p. 198.

* A gift made through inadvertency, caused by joy, is not void; but what is given without discrimination, the mind being disturbed by excessive joy, (is invalid.)—Coleb. Dig. Vol. II. p. 198.

† By saying "it may be taken back," the gift is declared void: donations made under the influence of grief, or the like, or by a minor, must be understood from the concurrent import of this text with that of Nārada.—Ibid. p. 197.
(n) "Given in sport;"—or in play. The phrase is synonymous with that which has been already explained, "given in jest."—Ibid. p. 198.

(p) "To a bad or unworthy man, mistaken for a good one:"—as the gift of gold to a man of the servile class, or a present to a vicious priest, where the declared intention was to give it to a virtuous priest. However, what is given to an unworthy man but without distinguishing whether it be intended for a worthy person or not, is valid. Ibid. p. 198.

V. The words of a man influenced by wrath, excessive joy, terror, sickness, or avarice, or of a minor, or of a decrepit old man, of an idiot or of one intoxicated or mad, are vain.—GÔTAMA.

VI. A contract made by a person intoxicated, or insane, or grievously disordered, or wholly dependent, by an infant, or a decrepit old man, or by a person without authority, is utterly null.—MÂNU.

VII. A contract made by a person intoxicated, or insane, or grievously disordered or disabled, by an infant, or a man agitated by fear or the like, or by a person without authority, is utterly null. JÁGNYAVALKYA.

VIII. What has been given by men under the impulse of lust or anger, or by such as are not their own masters, or by one diseased, or deprived of virility,* or inebriated, or of unsound mind (rū) or through mistake or in jest, may be taken back.—KÂTYÂYANA.

IX. If a bribe be promised for any purpose, it shall by no means be given, although the consideration be performed: but if it had at first been actually given, it shall be restored by forcible means, and a fine of eleven times as much is ordained by the son of GÂRGA and by the son of MÂNU.—Coleb. Dig. Vol. II. pp. 193—200.

(r) "Of unsound mind,"—naturally incapable of distinguishing right from wrong; or whose mind is alienated in consequence of disease or of magical arts.—Ibid. p. 497.

* A gift made by one deprived of virility is void, for he has not power over the family estate; but if he give away what he himself acquired, the gift is valid. (Coleb. Dig. Vol. II. p. 197.) This must be taken to be that man who was deprived of virility before the property was vested in him, since his right could not cease if he was deprived of virility after the right was vested in him.
VYAVASTHA-DARPANA.

181. In fact a gift attended with any defect is void; but a donation springing from a (sufficient) motive is valid.—Ibid. p. 194.

182. A gift made for religious purposes, even by a diseased man, is valid.—Ibid. p. 192.

Authority. This should be admitted, and is meant by Jimūta-vāhana, Raghu-nandana, and others.—Ibid.

Nārada, by declaring, "in civil affairs the law of gift is four-fold," limits the rules to civil donations; there is therefore no question on the validity of gifts for religious purposes.—See Ibidem.

183. Hence what is given for a declared religious purpose, even in sickness, is not invalid.—Ibid. p. 892.

183. A gift made or recompense paid by a minor for religious purposes is valid.

Authority. Even a minor makes presents on the eleventh day after his father's death: though given by a minor, they are legal gifts: his sense being unripe, the donation may be made by instructions from others, as he is taught to play at ball or the like. Ibid. p. 192.

Legal opinions delivered in, and admitted by, several Courts, of Judicature, and examined and approved of by Sir William Macnaghten.

Q. A certain farmer had a family by his two wives, that is to say, by the first wife two sons, A and B, and by the second two sons, C and D, and a daughter, E. His son A, having separated himself from him, lived apart, and left the family house. His (the father's) eldest wife died before he contracted a second marriage, and his three sons, B, C, and D, and his second wife lived with him as an united family until his death. Subsequently to his death, his three sons (who lived with him jointly) held the farm, and lived together as an undivided family. After some time, however, being unable to discharge the rent due from the farm, they resigned it, separated, and quitted their dwelling house. After such separation they never re-united. C and D lived again in their father's house, and C alone obtained a portion of his father's farm. Sometime after, B returned, and resid-
ed in a room of the house. C and D died leaving neither child nor widow. Subsequently to their death, their mother got possession of the farm, and discharged the rents due. She then executed a deed of gift of the whole farm in favour of her daughter E, and her daughter's son, for their support and for her own exequial rites, and died. Now B claims the property given by his step-mother. Under these circumstances, is the claimant entitled to inherit it, or is the gift legal?

R. If the donor enjoyed the farm by right of inheritance as heir to her son C, in this case she was not competent to give the whole farm to her daughter and daughter's son, without the sanction of her step-son B; consequently the farm would, on her death, devolve on the claimant (B.) Should the donor, however, have obtained a transfer of the farm in her own name, and procured it to be registered as hers in the books of the proprietor, and thus have obtained a new title, under these circumstances she was authorised to make a gift of it, and the gift is legal. Therefore the donor's daughter and her son derive a clear title by virtue of the gift, and B has no concern with it.—Zillah Midnapore. Macn. H. L. Vol. II. Ch. VIII. Case 2. pp. 208, 209.

Q. A person died, leaving no heir down to the widow, and his property devolved on his daughter, who was the mother of male issue. Afterwards the daughter's son died, by which means she became a childless widowed daughter. She subsequently made a gift of her father's property to her childless widowed sister, and died. The latter took possession of the property. In this case, was the childless widowed daughter competent to give, sell, or make other alienation of the entire property, while her father's brother's son was living? and supposing such disposition to have been made, is it legal and binding, or otherwise?

A daughter is not competent to alienate property which had devolved on her from her father to the prejudice of the next heir.

R. Under the circumstances stated, the childless widowed daughter had only a right to the enjoyment of her father's property with moderation. Therefore, the disposition by her was illegal. This is conformable to the Dāya-bhāga and other works.

City Dacca, July 4th., 1116.—Macn. H. L. Vol. II. Ch. VIII. Case 16. p. 224.
Q. A person died, leaving no male issue, and was succeeded by his maiden daughter, who, subsequently to his death, married, and had a son in lawful wedlock, which son died leaving several sons. Some time after, the daughter of the original proprietor made a gift of her father's whole movable and immovable property to one of the son's sons, though there are her husband and other sons of her son living. In this case, is the gift legal?

R. Under the circumstances above stated the gift of the whole property made by the daughter, without the sanction of her son's other sons, must be held in law to be null and void.

Calcutta Court of Appeal, June 18th, 1812.—Macn. H. L. Vol. II. Ch. VIII. Case 22. p. 232.

Q. The complainant stated in her petition that her husband's maternal grandfather, having been destitute of male issue, made over his whole ancestral landed estate by a deed of gift to his daughter, being her (the complainant's) mother-in-law, and died. The donee having taken possession of the gift, and enjoyed its produce for a considerable period, transferred it by gift to her son, the complainant's husband, who died, leaving two minor sons. Subsequently to his death, his mother died, on whose death the defendants dispossessed her (the complainant) and her sons from the property. The defendants answered, that the original proprietor died, leaving a widow and two daughters; that subsequently to his death, his widow came into possession of the landed estate; that on her death, her two daughters succeeded, but that the original proprietor had made no gift, as alleged, in favour of his elder daughter; that his second daughter had a son, whose death occurred prior to hers; that his elder daughter had two sons, (one being the complainant's husband,) which two sons died before her; and that, conformably to law, the property enjoyed by the original proprietor should have devolved on her paternal kinsmen. Under these circumstances, should the complainant's allegation be proved, is the gift legal or otherwise? If, on the other hand, the reply be considered proved by the depositions of the witnesses, will the property left by the elder daughter devolve on her son's sons and widow (the complainant,) or on her father's kinsmen, the defendants?
R. Should it be proved that the original proprietor gave his entire estate, consisting of lands and other property, to his elder daughter, and that she had bestowed it on her son (the complainant's husband,) such gift must be considered legal, the gift by a female of immovable property received from her father or affectionate kindred being recognized as valid in law. If on the other hand, the original proprietor did not make the gift to his elder daughter, in this case, she was incompetent to alienate her father's property which had devolved on her by the law of inheritance, and the gift to her son is illegal. Supposing the elder daughter to have died after the death of her son (the complainant's husband,) the succession goes to her paternal kindred (the defendants,) to the entire exclusion of her son's sons and widow (the complainant.)

Authorities:—"The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and sale, according to their pleasure, even in the case of immovables."

"To the nearest kinsman, the inheritance next belongs."

Zillah, Burdwan, March 24th, 1821.—Macn. II. L. Vol. II. Ch. VIII, Case 27, pp. 235, 236.

Q. A person, previously to his death, gave directions to his two wives that they should each accept a son in adoption. Subsequently to his death, his elder wife did not accept a son, and the two widows equally divided his estate. The elder widow made a gift of her whole share to a stranger, and died. Afterwards the younger widow received a boy in adoption. In this case, will the share of the elder widow, go to the donee, or will it devolve on the adopted son of the younger widow?

R. The son adopted by the younger widow with her husband's sanction, is entitled to the share of the elder widow, who infringed her husband's directions by omitting to make an adoption. The gift of the share which she received by partition with her rival wife is not legal, and the donee cannot take the property conveyed, because the adoption of a son is the only means in this case of preserving the oblations of food and libations of water at the funeral repast; and when
VYAVASTHÁ-DARPANA.

633

she, without doing such benefit to her deceased husband, made the gift, she deserves to be ranked among those widows who are incompetent to succession. Consequently the gift by her is null and void.

Zillah Dinagepore, August 31, 1813.—Macn. H. L. Vol. II. Ch. VIII, Case 40, p. 247.

Q. A landed estate was held in joint tenancy by several individuals, and one or two of the partners joined in selling it, signing the name of one minor sharer of the property to the deed of sale. In the case, is the sale of the estate, with exception of the share to which the infant is entitled, good and valid, or is the entire sale null and void? Supposing the mother of the minor co-heir to have consented to the alienation which had been made by his co-parceners, is the sale of the infant’s share thereby rendered complete and binding, or otherwise?

R. If one or two of the co-parceners, having sold the joint property, sign the deed of sale with their own names, and also with that of the co-parcener who is under age, the sale of the entire estate is not valid and binding, because all the partners have a right over it, and their property cannot be devised by individual alienation, but sale to the extent of the selling co-parcener’s share is good and legal, as they are masters of their own shares, and had a partial right to the property sold. The sale of the minor’s portion is null and void, even though his mother have consented to the alienation, for the property of an infant must be preserved until he comes of age. This opinion is conformable to the Dáya-bhága, Dáya-tattwa, Vivóda-chintá-mañi, Vivóda-bhangárña, Dwóita-nirñaya, and other legal authorities.

Authorities:

Nárada says: “A gift or sale (thus) made by any other than the true owner, must, by a settled rule, be considered in judicial proceedings as not made.”

Kátáyana:—“Let the judge declare void a sale without ownership, and a gift or pledge unauthorised by the owner.”

Zillah Nuddea, June 9th, 1817.—Macn. H. L. Vol. II. Ch. XI. Case, 4, pp. 294, 295.
Q. Is a minor competent to sell his ancestral landed estate or not? Supposing him to have executed a deed of sale, and not to have received the sum stipulated in it; in this case, is the sale valid and binding?

R. A minor has no power to sell his immovable property; and if he have not received the amount specified in the bill of sale, the sale is invalid.

Zillah Jungle mehauls, May 14th, 1817.—Macn. H. L. Vol. II. Ch. XI. Case 14, p. 305.

Q. Can a slave sell his daughter of three years old, while his master is living?

R. A slave is not competent to sell his issue without his master’s consent, and the sale under such circumstances is illegal and void.

Zillah Sylhet, December 2nd, 1815.—Macn. H. L. Vol. II. Ch. XI., Case 15, p. 305.

If a Hindoo sell his father’s land in his absence and while living and heard of, such sale is void ab initio, and the son can recover it against his own conveyance, even after his father’s actual death, or presumed death from absence of twelve years unheard of. But the purchaser has his remedy by action against the son for the purchase money, and the ruling power will direct the money to be refunded in whatever manner it deems most equitable.—Doe dem. Gangá-naráyaṇ Banerjea versus Bala-rám Banerjea.—East’s Notes, Case 85.

A claim by the legal heirs was adjudged, though opposed by an alleged deed of gift, it being doubted whether that deed was executed at all, or whether, at the time of its execution, the donor, from extreme old age, was in his sound mind.—Róm-naráyaṇ Dutt and others versus Musst. Sat-bansi and others.—23rd June, 1844. S. D. A. R. Vol. III. p. 377.

A will made by Hindoo during his minority was declared to be void. Hara-sundari Dást versus Káshi-náth Basák,—December, 1814. Cons. H. L. p. 11.

In a claim, under a deed of gift executed by the widow of a Hindoo Zemindar of Bengal who died childless, for the Zemindaree formerly possessed by him, which at his death devolved on the widow, it was
held that the widow could not alienate the estate, which at her death must pass to the husband’s heirs.—*Mahodá* and another *versus* *Kalyáns* and others. 14th March 1803, S. D. A. R. Vol. I. p. 62. See ante, p. 69.

A gift by a widow after the death of a son adopted by her, without issue, to the son of her younger daughter, was set aside, as prejudicial to the rights of a daughter, who at the time of the gift had not, but afterwards had, male issue.—*Musst. Bijoyá Debí* versus *Musst. Anna-pární Debí*. 26th September, 1806, S. D. A. R., Vol. I. p. 162.

*Legal opinions on various contracts delivered by the law officers, admitted by the civil courts of judicature, and examined and approved of by Sir William Macnaghten.*

Q. Are *Devottar* lands and houses appropriated to religious uses, fit subjects of sale or not?

R. If the lands have been endowed for the worship of some deity, and the house be occupied by it, the donor has no right in the endowment, and consequently he is incompetent to sell such property. The following is the doctrine laid down in the eleventh section of the *Srimadbbhágavata*. “He who seizes the subsistence of the gods or of priests, whether given by himself or another, is born a reptile in ordure for a million of million of years.”

Dacca Court of Appeal, November 27th, 1820.—Macn. H. L. Vol. II. Ch. XI., Case 18, p. 305.

Q. A Hindoo woman, about three or four hours previously to her death, and while she was in a state of extreme weakness, made a gift of her estate, consisting of lands and other property, to a stranger. In this case, is the gift complete and binding?

R. If their be neither issue nor any other heir of the woman, and the property given be not her husband’s property, and if when she made the donation she was in full possession of her mental faculties, the gift is legal and good.—City Dacca, February 27th, 1818.—Macn. H. L. Vol. II. Ch. VIII, Case 10, p. 217.

Q. A person purchased some real property with the produce of his ancestral lands, or with his hereditary annual allowance of money. In this case, is he having sons and son’s sons, competent to give the whole
or a part of such property, without their consent, to his daughter and sister’s son for their subsistence, or to sell it to them?

The gift of part or the whole of the landed property purchased with the produce of an ancestral estate is good and valid.

R. If the individual above alluded to purchased some landed property with the produce of lands descended to him from his ancestors, or with his annual pecuniary allowance, and give or sell a part or the whole of such estate (without the consent of his sons and son’s sons) to his daughter and sister’s son, he is competent to make such alienation, because the property given was purchased with the produce of the patrimonial estate, which does not constitute patrimony; and there is no prohibition recorded against gift by a father of the whole or a part of such property, as his family does not thereby suffer for maintenance, and he is independent with regard to such property. This opinion is consonant to the Dáya-bhága, as current in Bengal.

Authorities:—Since here also it is said “the whole,” this prohibition forbids the gift or other alienation of the whole, because immovables and similar possessions are means of supporting the family. The prohibition is not against the donation or other transfer of a small part not incompatible with the support of the family.

Zillah Beerbhoom.—Macn. H. L. Vol. II. Ch. VIII, Case 14, p. 221.

Q. A person, previously to contracting a second marriage, executed an agreement in behalf of his eldest wife to the following effect: “you will exercise authority as proprietor over a Guddee (religious endowment) at Rudsetta, and I have no concern with it, and my second wife will have the right over the Guddee at Bahman Gurh. If there be no issue (of mine,) you will moreover have a ten anna share of the Guddee at Bahman Gurh (which he assigned to the second wife,) and my second wife the remaining six anna share.” In this case, is the instrument, according to law, good and binding?

R. The husband was the master of his own wealth, and has the power to give away property, provided his family do not suffer on account of maintenance; consequently, if the produce of the six annas share of the Guddee at Bahman Gurh will suffice for the expenses attendant on his second wife’s maintenance, and there be no issue, then the ten-anna share of the Guddee at
Bahman Gurkh, which he, previously to contracting a second marriage, conditionally assigned by the agreement in favour of his eldest wife, will go to her (the eldest wife,) and the agreement is good and binding.

Authorities.—

The text of Nârada quoted in the Dâya-bhâga: "Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."

Vrîhat Manu: "The support of persons who should be maintained, is the approved means of attaining heaven; but hell is the man's portion, if they suffer. Therefore let a master of a family carefully maintain them."

City Moorshedabad, June 11th, 1818.—Macn. H. L. Vol. II. Cha. VIII, Case 18, pp. 226, 227.

Q. Is a Brahman, whose eldest brother, leaving his ancestral and self-acquired property in a joint state with him, had entered into the order of a religious student, and is still living, competent to make a verbal gift of the whole undivided estate to his daughters, or otherwise?

R. When the eldest brother, having left the order of a housekeeper, entered into that of a religious student, his right to the paternal estate became extinct, therefore the gift of the undivided property made by the younger brother to his daughters is legal and valid.

Authorities:—The text of Vâsishtha, as laid down in the Ratnâkara and other books of law: "They who have entered into another order, are debarred from shares."


Q. A woman executed a deed of gift, in which she assigned her property, movable and immovable, to a person whom she educated and supported, and she (the donor,) on the same date, and before the same company, in whose presence the deed was executed, obtained an agreement from the donee, purporting that while the donor lived the donee would support her, and not act contrary to her directions, on failure of which conditions the gift should be held null and void. The donee having got possession of a part of the movable pro-
property mentioned in the deed, and subsequently a dispute having arisen between the donor and donee, the former wishes to revoke the gift, and to recover possession of the property occupied by the donee. In this case, is the donor competent to recede from disposition, or not?

A gift may be taken back on the donee's violation of the conditions annexed

R. It appears in this case, that the woman, having received an agreement from a person, purporting that he should support her until her death, and not deviate from her commands, gave to him her own estate, consisting of lands and other property, and that the donee did not fulfill the condition stipulated. In this case, the donor is entitled to take back the document from the donee, and to revoke the gift.

Zillah Chittagong, April 5th, 1816.—Macn. H. L. Vol. II. Ch. VIII., Case 29, pp. 237, 238.

Q. A woman made a gift of her property to her daughter and son-in-law by a written instrument. In this case, is she (the donor) competent to revoke the gift, or otherwise?

R. No person is competent to revoke a gift unlawfully made, and to resume possession of the property disposed of by the gift.

Zillah Chittagong, January 30th, 1816.—Ibid. case 30, p. 338.

Q. A man dying, and leaving some landed property, a son begotten by him on a concubine got possession of that property, and died leaving no children. He was succeeded by a widow. Was she (the widow of the latter deceased person) competent to make a gift, sale, or other alienation of the property, while the daughter's son by another concubine of the original proprietor, exists? If she should have made either of such dispositions, is it good and binding, or otherwise?

R. It is not particularly mentioned to what class the original proprietor belonged. If he was a Śādṛa, that is, of the fourth class, and the daughter whose son survives was begotten by him on a concubine, the widow of the son of his other concubine may enjoy the whole estate, whether consisting of real or personal property, during her life-time, and she may also give or sell a small portion of it for the completion of her husband's funeral rights, or for his spiritual benefit, as well as for her own mainten-
ance; but these circumstances excepted, she is incompetent to dispose of the property inherited from her husband, and the gift of such property made by her must be considered void.

 Authorities:—

The Mahā-bhārata, in the Chapter entitled the Dāya-dharma. See ante, p. 48, Kātyāyana. ante p. 45. Nārada ante, p. 51.

Jānyavalkya—"Even a son, begotten by a Shādāra on a female slave, may take a share by the choice of the father; but if the father be dead, the brethren should make him partaker of half a share."

By the term "a son begotten by a Shādāra or a female slave," must be understood daughters, daughter's sons, and other heirs. This opinion is conformable to the Dāya-bhāga, Dāya-tattwa, Vivāda-chintā- mañi, Mitākṣharā, Mañu, and other legal authorities.*

City Dacca, May 1st, 1816.—Macn. H. L. Vol. II. Ch. VIII, Case, 48, pp. 256—258.

Q. A landed estate was jointly held by two persons, and one of them being anxious to sell his own portion of the property, the other offered a proper price of it, but he nevertheless sold his interest to a stranger. Under the such circumstances, is the sale valid and binding?

Right of pre-emption recognised in joint property, R. Supposing the landed property to have been held in joint tenancy by two persons, and when one of them negotiated a sale to the extent of his own share, his co-parcener to have offered him the same price as settled by the purchaser, in such case the property must be sold to the parcener, and if it should have been disposed of to a stranger, the sale must be set aside.†

* In the case of Brindāban-chander Roy versus Videha-chander Roy, where the Respondent claimed to retain possession of the certain lands on the plea of gift from a Hindu widow by whom they had been taken on her husband's death, on a division among the heirs, the court of Sudder dewanny Adawlut held that the plea was not proved, and at all events the gift would have been invalid without the consent of the heirs. (S. D. A. B. Vol. IV. p. 143.) And in another case (p. 117 of the same volume,) it was determined that the widow of a Hindu, who died without children, had the power of making a gift of a portion of her late husband's property for his spiritual benefit; but such not appearing to the court to have been the object of the gift in the case in question, the claim of the donee was disallowed.

† According to the Hindoo law, there is no right of pre-emption, either in the schools of Bengal, Benares, or Mithila; but the two latter forbid the sale of undivided property, I have not been able to discover any work which conforms the doctrine laid down in the
Moorshedabad Court of Appeal, December 31st, 186.—Macn. H. L. Vol. II. Cha. XI, Case 7, p. 297.

Q. A deceased Hindu was survived by his adopted son, who sold his adopting father's landed estate to a stranger. The purchaser is now digging a tank in the land, the adopting father's brothers claim the right of pre-emption, and want to purchase the property sold. In this case, will the sale by the adopted son become null and void, and are the claimants of pre-emption entitled to the estate?

R. The sale of a person's own share of property, whether consisting of movables or immovables, is according to law valid and binding, and it cannot be avoided by the seller's uncle's sons claiming the right of pre-emption.

Authorities:—"If they severally give or sell their own (undivided) shares, they do what they please with their property of all sorts; for surely, they have dominion over their own."

Zillah Burdwan, December 3rd 1819. Adwoita Dutt, versus Krishnamohan Dutt and others.—Macn. H. L. Vol. II. Ch. XI. Case 8, p. 298:

Q. Is property held jointly by several individuals subject to be disposed of for the satisfaction of a decree passed against one of the proprietors?

Joint property is answerable for a debt to the extent of the debtor's share only.

R. Whatever be the legal share of the person against whom the decree had been passed, that alone can be sold, and the sale to that extent only is legal.*


Malā-nirūdaya Tantra as to pre-emption, and I entertain some doubts as to the accuracy of this opinion. It appears at best to be founded rather on the inability of a co-heir to sell his share of joint property than on the ground of vicinage; and in Bengal, as that inability does not exist, there could not, I imagine, be any legal claim of pre-emption. Note by Sir William Macnaghten.

* The answer to this question of course presumes that the debt, on account of which the judgment was given, had been contracted for the sole and exclusive benefit of the individual proprietor, and not on behalf of the family at large.—Ibid.
REMARKS ON VARIOUS KINDS OF CONTRACTS.

As a contract made by an outcast or degraded is void, so also are the contracts made by those who have quitted the order of a householder, or is otherwise civilly dead.*

A married woman has absolute dominion over the gifts of her affectionate kindred: she has no power of alienation by gift, &c. over the immovables bestowed on her by her husband; the property earned by mechanical arts, or which is received through affection from others but the kindred, is always subject to the husband’s dominion; the rest is pronounced to be the woman’s property: the husband however has power to use or consume such Strī-dhan as well as that of any other description in a case of distress.†—See Coleb. Dd. bhā. pp. 75, 79.

Although a text declares ‘wealth common the married pair;’ (3 Dig. 488.) yet it is a general rule that the husband alone has power to make contracts of such property, coverture incapacitating a woman from all contracts in respect of property not exclusively her own, but those contracts are valid and binding which are made by wives, the livelihood of whose husbands chiefly depends on their labour; so also are those made for the support of the family, during the absence or disability, mental or corporeal, of the husband.‡

Among persons who are competent ( to make a contract ) the maxim of ‘caveat emptor’ applies. Thus Nārāda ordains: “A buyer ought at first himself to inspect the commodity and ascertain what is good and bad in it; and what after such inspection he has agreed to buy, he shall not return to the seller, unless it had a concealed blemish.§

A gift may be revoked if made under a mistake; and by analogy to this rule, every contract is vitiates by error.¶

---


† "However, if the husband have no means of subsistence, without using his wife’s separate property, in a famine or other distress, he may take it in such circumstances, but not in any other case."—Ibid: pp. 76, 77.

‡ On the authority of Colebrooke’s Treatise on Obligation and Contract. (Book 4. Ch. VII. § 611.) Sir William Macnaghten has laid it down that the wife is subject to her husband’s control, even in regard to her separate and peculiar property (Macn. H. L. Vol. I. p. 122.) This is not however observed in practice.


Any species of duress vitiates a contract. Thus Jagan-nātha, commenting of the text of Nārada, to the effect that what a man does while disturbed from his natural state of mind is void, observes: "In cases of fear and compulsion, the man is not guided solely by his own will, but solely by the will of another. If he, terrified by another, give his whole estate to any person for relieving him from apprehension, his mind is not in its natural state; but after recovering tranquillity, if he give any thing in the form of recompense, the donation is valid."—See ante, p. 624.

This corresponds with what has been stated by Mr. Colebrooke in his treatise on Obligations and Contracts (Ch. VI. § 109,) that though by the Hindu law things done by force are pronounced null, yet in fact they are, in every system of jurisprudence, voidable rather than void; as they are susceptible of confirmation by assent subsequent, whether express or tacit.

Any fraudulent practice (See ante, p. 625,) vitiates a contract: and in a contract of sale, if the vendor, having shown a specimen of property free from blemish, deliver blemished property, the vendee may return it at any time, and the vendor is liable to pay a fine and damages on account of his dishonesty.*

According to the law as current in Bengal, the sale &c. by a single co-sharer of the joint property are valid so far as regards the seller's own share; but not of the shares of the other parceners except at the time of distress for the support of the family and for performance of indispensable duties (see ante, pp. 593—597.) And not only are the survivors answerable for a debt contracted by their deceased partner, if the sum borrowed was applied to their use, but according to Mant "should even a slave make a contract in the name of his absent master for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it."†

It has been laid down as a general principle by Mr. Colebrooke, that the head of a family is answerable for necessaries supplied for the indispensable use of it and for the subsistence of the persons whom he is bound to maintain, whether it be his wife, his parent, his child, his slave, his servant, his pupil, or his apprentice, to whom the necessaries are furnished and goods indispensably requisite are delivered. †

---

The widows on whom the property of their husbands has devolved, are declared incompetent to alienate the same except for special purposes (See ante, pp. 45—159.)

And in a case where the heirs of a person deceased refused payment of a bond contracted by his widow (also dead,) and in which it was proved that part of the amount was expended in payment of her husband’s debts, it was held that the heirs were liable for so much of the amount as had been so laid out, but that the widow could not saddle the estate or the heirs with any unnecessary burthen. Macn.—H. L. Vol. I. p. 125.

In recapitulating the causes of incapacity, Jágnyávalkya observes: “A contract made by a person intoxicated, insane, diseased, grievously disordered or disabled, by an infant, or a man agitated by fear or the like, or (in the name of another) by a person without authority, is utterly null.” Upon the above passage Jáganátha thus comments: “singly the gift of wages by a man possessing his senses is valid; joined with madness or the like, the intentional payment of wages during a lucid interval may also be valid; but singly a gift by a man affected by insanity or the like is void.” From this comment the principle may be deduced, that the act of a lunatic may be effectual if the contract be onerous and the agreement rational, on the presumption of the act having been done during a lucid interval; but that, where it may be prejudicial to him and unattended with any benefit, it should be held to be ipso facto void.—Ibid. pp. 125, 126.

So also the validity of a deed executed by a man in his last illness should be upheld, if it be proved that he was of sound mind at the time of its execution: but otherwise, if it appear that his mind was not in its natural state.—Ibid. p. 126.


The liquidation of debts is rigorously enjoined: “The sons must pay the debts of their father, when proved, as if it were their own, (that is with interest;) the son’s son must pay the debt of his grandfather, but without interest; and his son, or the great-grandson, shall not be compelled to discharge it, unless he be heir and have assets.” Vṛihásfati. Vide Coleb. Dig. Vol. I. p. 274.
Sir William Jones however was of opinion that where there are no assets, the son and grandson are under a moral and religious, but not a civil, obligation to pay the debts, if they can: but assets may be followed in the hands of any representative. (See note *Ibid* p. 274.) This opinion is followed in practice by the Courts of justice. In all cases, however, the liability extends only to just and reasonable debts.

Hindoo gifts are not binding on representatives: and in a case where a person contracted to pay to another a sum of money in consideration of that person's giving his daughter in marriage to the son of the contracting party, it was held that the contract was not binding after his death; the law not permitting money to be given for a bride, and the consideration consequently not being a legal one: and it should be observed, that in all such cases the turpitude is considered to be on the side of the receiver, the giver not being deemed to have seriously intended to give.—Mackn. H. L. Vol. I. p. 128.

It would be superfluous to enter into further disquisition relative to the law of contract, bailments, or other matters connected with judicial proceedings, as at present the greater part of those laws are not applied in practice. The rules connected with the law of evidence too are not given in this book, because they are not followed in the existing courts of justice. Those rules are few and simple. Various descriptions of incompetent witnesses are enumerated, and much is left to the discretion of the Judge with respect to the credit which should be attached to testimony. In the last resort discovery may be had by compelling a defendant to make oath or by ordeal. They who are desirous of further information on these heads, should consult the *Mitákeśharé* and *Jagan-nátha's* Digest translated by Mr. Colebrooke.
CHAPTER VIII.
ON MARRIAGE AND STRI-DHAN.

SECTION 1.—ON MARRIAGE.

Vyavastha. 384. Marriage amongst us Hindus is not only a civil contract, but also a sacrament, forming the last of the ceremonies prescribed to the three regenerate classes, and the only one for Shúdras.*

Vyavastha. 385. Betrothment, in fact, constitutes marriage, though the marriage is not irrevocable and complete without performance of the fixed ceremonies.*

Authority.
I. "The damsel, (indeed,) whose husband shall die after troth verbally plighted, his brother shall take her in marriage according to this rule."—Manu, Ch. IX. v. 69.

II. Vījyāneshwara after citing the above text, observes: "It appears from this passage that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part." Mitākṣara, p. 300.

III. "Daughters of the seven twice-married women must be shunned as girls of the lowest birth; and she who has been verbally or mentally betrothed, on whose arm a bracelet has been auspiciously tied, who has been given away after touching water, whose hand has been taken by a bridegroom, who has been approached with nuptial fire, and the daughter of a twice-married women."†—Kasyapa cited in the Udvāka-tattva of Raghu-nandana.

IV. "On the death of a damsel verbally betrothed, the families of both her father and husband contract impurity for three days." Shudhi-tattwa of Raghu-nandana

CONCLUSION. From the circumstance of the man to whom a girl was affianced being termed (her) 'husband' and the

‡ Vide Coleb. Dig. Vol. II. p. 432.
betrothed damsel when married to a different man being styled 'twice-married,' and both families contracting impurity on the death of a betrothed damsel, it is clear that betrothment constitutes marriage.

**Vyavastha**. 386. In practice, however, betrothment not being considered marriage irrevocable, a betrothed damsel is, on the death of him to whom she was affianced, or for any other just cause, given in marriage to a different person: only the man who marries her is generally lowered in caste and society.

**Authority.** The above practice seems to have been founded upon the following texts:—I. 'If her husband die after a damsel has been given to him with water poured on his hands, and troth verbally plighted, but before she has been contracted to him by holy texts, that virgin belongs to her father alone.'—2. 'Once is a damsel given in marriage; he who detains her shall incur the punishment of a thief: but if a worthier bridegroom offer, he may take the damsel though given away, (provided the first were undeserving.)—3. 'Should a man depart after giving the nuptial gratuity, it becomes the exclusive property of the damsel; she must be detained one year, and may (afterwards) be legally given in marriage to another: but if tidings arrive, she must wait three years, and after that period the girl may be given to another at pleasure.'

**Vyavastha**. 387. If a damsel is betrothed to two or more persons, and the bridegrooms arrive before the nuptials are completed, then, of all the persons to whom she is promised, he to whom the first promise was made shall obtain her, and the other shall recover what he had given to the bride: but if the first bridegroom arrive when the nuptials have been consummated, he shall receive back what he had given.

---

† JAGHWAVALA, cited in Colebrooke's Digest, Vol. II. p. 489.
‡ CAAWAVALA, cited in Colebrooke's Digest, Vol. II. p. 491.
Vyavastha. 388. But should a bridegroom or husband die after the ceremony of gift, a second marriage of such a damsel is scarcely in practice amongst the (Hindu) gentry, though it is not uncommon amongst the common people.*

Reason. Although the marriage of a widow was directed by Parāśara, yet the other sages having considered it a censurable act, as being one by which the observance of the duty of continence and austerities is obstructed, and it being said in the A'dītya-purāṇa as well as the Vrihat Nārādiya Purāṇa that these (parts of ancient law) have been abrogated by wise legislators, as the cases arose at the beginning of the kali age, and Vyāsa, the son of Parāśara, having declared the injunctions of infallible legislators to be of equal authority with the holy writ (the vedas),† the (Hindu) gentry of this age still act in obedience to that prohibition.

Vyavastha. 389. It is the performance of the ceremony of the gift that renders a marriage irrevocable,‡ and the kushandika completes it (even withoutconsummation.)§

Authority. I. Once is the partition of an inheritance made; once is a damsel given in marriage; and once does a man say, 'I give:' these three are, by good men, done once for all and irrevocable.—Manu, Ch. 9, V. 47.

II. Let no man of sense, who has once given his daughter to a suitor, give her again to another; for he, who gives away his daughter,

---

‡ 'Marriage' is a right to be performed by the bridegroom, and which completes the regenerating ceremonies: since the act of receiving (the bride) effects it, the term has been also used (in this gloss) as signifying the gift (of a maiden.)—Coleb. Dig. Vol. III. p. 606.
§ Kushandika is the last of the rites performed in a marriage: it is enjoined to be performed within four days from the date of the gift. In this, the bridegroom makes kōma or oblation to fire, and, standing behind the bride, holds the palms of both hands open below those of the bride, who, in her palms joined and open holds some lējās or parched paddy, and jointly with the bridegroom drops the same on the fire as an oblation; and during the recital of certain prayers the married pair walk hand in hand seven steps on seven circles made on the ground with white paint.
whom he had before given, incur the guilt and fine of speaking falsely in a cause concerning mankind.—Ibid. Ch. 9, V. 71.

III. The nuptial texts are a certain rule in regard to wedlock; and the bridal contract is known by the learned to be complete (and irrevocable) on the seventh step (of the married pair hand in hand, after those texts have been pronounced.)—Manu, Ch. 3, V. 16.

IV. Therefore marriage is not valid without all the ceremonies, from the junction of hands to the seventh step of the married pair. The Udvåha-tattva of Raghunandana.

Vyavastha. 390. There are eight forms of marriage:—
1.—The Brāhma, 2.—Doiva, 3.—Arśha, 4.—Prájápatya, 5.—Asura 6.—Gándharva, 7.—Rákshasa, and 8.—Poishàcha.*

These are described by Manu and Jágyavalkya as follows:—

Authority. I. Manu:—“The ceremony of Brāhma, of the Devas’ of the Rishiis, of the Prájápatis, of the Asuras, of the Gándharvas, and of the Rákshasas.—The gift of a daughter, clothed only with a single robe, to a man learned in the Veda, whom her father voluntarily invites and respectfully receives, is the nuptial rite, called Brāhma. The rite, which sages call Doiva, is the gift of a daughter, whom her father has decked in gay attire, when the sacrifice is already begun, to the officiating priest who performs that act of religion. When the father gives his daughter away, after having received from the bridegroom one pair of kine, or two pairs, for uaes, prescribed by law, that marriage is termed Arśha. The nuptial rite called Prájápatya is, when the father gives away his daughter with due honor, saying distinctly: ‘may both of you perform together. your civil and religious duties.’ When the bridegroom, having given as much wealth as he can afford to the father and paternal kinsmen and the damsel herself, takes her voluntarily as his bride, that marriage is named Asura. The reciprocal connection of a youth and a damsel, with mutual desire, is the marriage denominated Gándharva, contracted for the purpose of amorous embraces and proceeding from sensual inclination. The seizure of a maiden by force from her houses while she weeps and calls for assistance, after her kinsmen and friends

have been slain in battle, or wounded, and their houses broken open, is the marriage styled Rákshasa. When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage, called Poishácha, is the eighth and the basest."—Ch. III. vs. 21, 27, 28, 29, 30, 31, 32, 33, 34.

II. Jáonyavalkya:—"In the Bráhma nuptials the damsel is given (by her father,) when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the Doiva, to the priest employed in performing the sacrifice; in the Ársha, to the bridegroom, from whom he receives, (for religious purposes,) a bull and a cow. When the father gives her to a suitor, saying, 'perform all duties together,' the marriage is named Káya (or Prájāpatya,) and a son produced by it confers purity on himself and on six descendants in a male line: an Ásura marriage is contracted by receiving property from the bridegroom; a Gándharva, by reciprocal amorous agreement; a Rákshasa, by seizure in war; a Poishácha, by deceiving the damsel."—Coleb. Dig. Vol. III. p. 604.

Vyavastha. 391. Of these modes, four, the Bráhma, Doiva, Árṣa, and Prájāpatya, are legal for a Bráhma: the marriage styled Gándharva, and the seizure of a maiden in war (i.e. the rákshasa marriage,) are peculiar to the Kshatriya; the Ásura marriage is permitted for a Voishya and a Shúdra; the Poishácha, forbidden to them, should be practised by no person whomsoever.*—Shúla-páni.

Authority. The first four (are approved in the case) of a priest; the Gándharva and Rákshasa marriages are permitted for a soldier; the Ásura ceremony is peculiar to mercantile and servile men; the Poishácha marriage, is reprobated for all.†—Jáonyavalkya.

† Yet after the ceremonies have been once gone through, the marriage, is by no means revocable.

Sir William MACNaghten says: "I am given to understand that marriages by the Poishácha mode are not uncommon; and that young women, who from their wealth or
Vyavastha'. 392. At present, the Brāhma nuptials only are practised by good men; but even the marriages called Āsura, Gāndharva, Rākshasa, and the rest, are sometimes practised by others.*

Vyavastha'. 393. The nuptial rites are necessary to be performed in each and every one of these forms of marriage.†

Authority. Nuptial rites are ordained in the marriage styled Gāndharva and the rest; to this contract the nuptial fire must be made witness by men of the three classes.—Devala.

The nuptial rites are the betrothment, nāndī shraddha performable in the forenoon of the day of gift, the gift of the bride on that night, and the kushandikā to be performed within four days from the gift of gift.‡

beauty may be desirable objects, are, not unfrequently, inveigled by artifices into matrimony, the forms of which once gone through, the contract is not dissoluble on any plea of fraud, or even of force."

‡ Sir William Macneighten says: "The Gāndharva marriage is the only one of the eight modes for the legalising of which no forms are necessary; and it seems that mutual cohabitation, as it implies what the law declares to be alone necessary, namely, 'reciprocal amorous agreement,' would be sufficient to establish such a marriage, if corroborated by any word or deed on the part of the man:" and in reference to this he alludes to a case, saying: "On this principle the law officers of the Sudder Dewanny Adawlut declared legal a marriage contracted in Cuttack, not very long ago, in a case where the parties had cohabited for some time, and the man, signified his intention by placing a garland of flowers round the neck of the woman." It is however to be remarked that in the Gāndharva form of marriage the only ceremony that may not be required to be performed is that of the gift, the exchange of the flower garland between the bridegroom and bride being expressive of the gift of the one to the other: but the ceremony of kushandikā should certainly be performed, as otherwise the marriage is not complete though irrevocable.—Vide Str. H. L. Vol. I. p. 41.

‡ The details of the marriage ceremonies recapitulated by Mr. Colebrooke in his Essay on the Religious Ceremonies of the Hindus, (Asiat. Res. Vol. VII. p. 209,) are religious rites mixed up with customs: all of the latter are not, however, invariably the same in all the provinces of India.
PERSONS COMPETENT TO GIVE A GIRL IN MARRIAGE.

 Vyavastha. 394. A father, paternal grandfather, brother, 
Sakulya,* maternal grandfather, maternal uncle, and mother, if of sound understanding, are competent to perform the ceremony of the gift of a bride to her bridegroom; the right of giving a girl in marriage devolves successively, so that on failure of the first, the next in order is entitled to perform the ceremony.—See Uddha-tattva.

Authority

1. A father, paternal grandfather, brother, Sakulya,* maternal grandfather, and mother are the givers of a damsel (in marriage;) in default of the first, the next in order, if in the natural state of mind, (is entitled to perform the ceremony of gift.)—Vishnu.

II. A father, paternal grandfather, brother, Sakulya,* and natural mother are the givers of a damsel (in marriage;) in default of the first the next in order, if in the natural state of mind, (is entitled to perform the ceremony of gift.)—Jânyavalkya.

III. The father himself will give the daughter (in marriage,) or her brother by the father’s consent, the maternal grandfather, the maternal uncle, the Sakulya,* and relations in the maternal line,‡ the mother in default of all (these,) provided she be of sound understanding, otherwise the kinsmen of her father will give the daughter in marriage.§—Nârada.

Conclusion. The maternal uncle must be understood to be after the mother; and the order of the Sakulya and paternal grandfather as stated by Nârada is not to be respected, but that prescribed by Vishnu and Jânyavalkya is to be followed in practice. This is the doctrine of Raghu-nandana.

Vyavastha. 395. Every father (a) is bound to give his daughter in marriage at the proper time (i.) he that does not, is punishable in both worlds.§

* By the term Sakulya is here meant relations of the same race as far as the tenth degree of the affinity, as expounded in the following text cited in the Shuddhi-tattwa.—

"Sakulya (is any of the) relations as far as the tenth degree."*

† Uddha-tattva.—See Str. H. L. Vol. 1. p. 35.

‡ See Nîrînya-sindhu, Sanât. p. 219.

§ See Dhd. bhad. p. 186; Coleb. Dig. Vol. II. p.287; and Str. H. L. Vol. 1. p. 35.
Authority. I. The father (a) who gives not (his daughter in marriage) at the proper season (i.e.) the husband who approaches not (his wife) in due season, and the son who gives not support to his mother, are criminal, and shall be punished according to the law.—Vrīhaspati, cited in the Viśāda-bhangāravā. Vide. Colebrooke’s Digest, Vol. II. p. 386.

II. As often as a virgin’s courses recur, who desires and demands marriage with a man of equal class, so many beings are destroyed by the fault of her father and mother: thus is the law declared.—Vaśishtha. Ibid. p. 387.

III. Reprehensible is the father (a) who gives not his daughter in marriage at the proper time, and the husband who approaches not his wife in due season (i.e.) reprehensible also is the son who protects not his mother after the death of her lord.—Manu. Ch. 9, v. 4.

(a) Here the term ‘father’ comprehends also the girl’s mother and the heirs of the father, inasmuch as they also are bound to give her in marriage.—See ante, pp. 363—367.

(i) ‘At the proper time or season’—that is, before the appearance of her menses; for a text of Goutama ordains that a girl should be given in marriage before her menses have appeared—Kulēka Bhatta.

IV. Before her breasts are prominent, a girl should be given in marriage: both he who gives (a damsel in marriage) after (her) menses have appeared, and he who receives (such a damsel,) sink to a region of torment; and the father, paternal grandfather, and great grandfather (of each) are born again in ordure: therefore, should a damsel be given (in marriage) before her menses appear.—Poithinashi.

Vyavastha. 396. But if a bridegroom endued with learning and good qualities be not had, she may be kept unmarried till her death.†

Authority. But it is better that the damsel, though marriageable, should stay at home till her death, than that

---

* A girl eight years old is termed Gouti, and nine years old is Raksi, at the tenth year of age is termed Kanyāka, after that she is Rajawala (a female with menses.)

† See Str. H. L. Vol. I. p. 36.
he should ever give her in marriage to a bridegroom void of excellent qualities (u.)—Manu. Ch. 9, v. 89.

(u) Even after the appearance of her menses, a girl should stay at her father’s house till her death, yet she should never be given in marriage by her father to a man destitute of learning and good qualities.—Kullūka Bhatta.

**Vyavastha** 397. If the persons competent to dispose of a girl do not give her in marriage at the proper time, she should wait for three years from the time that her menses first appear; after that period, she is at liberty to choose for herself a bridegroom, and by such act neither she nor her husband would commit an offence.

**Authority.** Three years let a damsel wait, though she be marriageable; but, after that time, let her choose for herself a bridegroom of equal rank (e.) If, not being given in marriage, she choose her bridegroom, neither she nor the youth chosen commits any offence.—Manu. Ch. 9, vs. 90, 91.

(e) After the lapse of three years if she do not get a bridegroom endued with superior qualities, she should for herself choose a bridegroom equal in class and qualities.—Kullūka Bhatta’s commentary on the above texts.

**Vyavastha** 398. If there be none competent to dispose of her in marriage, she, when marriageable, is to choose for herself a bridegroom, she being then at her own disposal.†

**Authority.** If there be no persons (competent) to give her in marriage, let the damsel herself choose a (suitable) bridegroom.†—Jānyavalkya, cited in Vivāda-bhangāravā. Vide Coleb. Dig. Vol. II. p. 387.

**Reason.** The reason why under the above circumstances such liberty is granted by law to a female is, that her obligation to marry is amongst the ordinances of the Veda, and that marriage is the principal sacrament ordained with regard to her person as being in lieu of the regenerating ceremony upa-nayana, and com-

---

plectly expiatory of the sinful taint that every child contracts in the mother’s womb, without which she remains impure.* With the male sex marriage constitutes the order of housekeeper (grihastha,†) the second and most respectable of the four orders.‡

* By oblations to fire during the mother’s pregnancy, by holy rites on the birth of the child, by the tonsure of his head with a lock of hair left on it, by the ligation of the sacrificial cord are the seminal and uterine taints of the three classes wholly removed. The same ceremonies (except that of the sacrificial thread,) must be duly performed for women at the same age and in the same order, that the body may be made perfect; but without any texts from the Veda. The nuptial ceremony is considered as the complete institution of women, ordained for them in the Veda, together with reverence for their husbands, dwelling first in their father’s family, the business of the house, and attention to the sacred fire. **MANU, Ch. 2, ss. 87, 86, 67.

The nuptial ceremony is the only one ordained in the Veda in respect of women: it is said by **MANU and others to be (as their upa-nayana (ligation of the sacrificial thread;) their rendering service to their husbands is (equal to) staying in the family of the guru and studying the Veda, and the performance of the household duties is (equal to) the performance of the morning and evening homa, (oblation to fire) and attention to the sacred fire; thus marriage being substituted for upa-nayana, the latter is not ordained for the female sex.—**Keśirāja Bhatta.

† Should a wife be not obtained, a man must perform the vow or expiation called ‘Svaśaka.’—**Udātha-tattvam.

The wise call not the habitation (alone) the home, (for) the wife is described by that name (grīka;) with her, indeed, a man attains all the purposes of human life.—A text cited in the **Udātha-tattvam.

From the wife alone proceed offspring, good household management, solicitous attention, most exquisite caresses, and that heavenly beatitude which she obtains for the manes of ancestors and for (the husband) himself.—**MANU.

Perpetuated offspring and heavenly abode are obtained through a son, son’s son, and a great grandson; therefore, should virtuous wives be respected, cherished, and well guarded.—**Jāgonavalkya. See Coleb. Dig. Vol. II. p. 400.

‡ (1.) The student of the Veda, (2.) the married man, (3.) the hermit, and (4.) the anchoret, are the offspring, though in four orders, of married men keeping house: But of all those, the housekeeper, observing the regulations of the Shruti and Smṛti, may be called the chief; since he supports the three (other orders.)—**MANU, Ch. 6, ss. 87 and 89.

Four orders are prescribed for Brahmaṇas: (viz. the order of) the married man keeping house (grīhī or grīhastha,) the student of the Veda (brahmachārya;) the hermit (vēsā-prastha,) and the anchoret (bhikṣu, saṃyaska or yati.) To Kṣatriyas also are ordained (the first) three orders; and two (ı. a.) the brahmachārya and grīhī, for Vaiśyas. The only order to be entered by the Shādra is that of grīhī or grīhastha.—**Yamana purāṇa, cited in the **Udātha-tattvam.—See Str. H. L. Vol. I. p. 34.

Thus for a Shādra also marriage is indispensably necessary; inasmuch as his duty is to enter the order of grīhī and no other, and one cannot be a perfect grīhī without a wife, and marriage is the only sacrament which completely removes his seminal and uterine taints, and renders him a pure Shādra.—See ante, pp. 365–367.
The Court differing in opinion delivered separate judgments. The following is the opinion of the second Judge in concurrence with the opinion of Sir James Colville C. J. who left India a few days ago.

Jackson, J.—The only question before the Court is one of casts, and that involves a consideration of the point, whether the guardianship of this infant vested upon the death of the father in the brother or the mother. Upon the affidavit of Jánakí-prasúd, it appears that the father had made this contract of marriage with Rám-chánd, that the parties came to Calcutta to carry out the ceremony; that the father died before the marriage was effected, and that subsequently the mother refused to allow it to proceed, or to permit the infant to see her brother, who, in my opinion, was the legal guardian of the child. The case made by the mother was supported by the joint affidavit of twelve persons, and if number is any criterion, it is conclusive as to the marriage desired by the mother having taken place. It is necessary, however, to consider the affidavits with reference to the question of casts. (His lordship then went through the affidavits, commenting upon that of the mother and her friends as unsatisfactory and inconclusive, and proceeded.) The next question is, whether the right to give in marriage vested on the father's death in the mother or the brother of the infant. I cannot of course consider this case as if the parties were Europeans. The universal tendency of the Hindu law, as laid down in the books from Manu to Strange is to exhibit the Hindu woman as occupying a strict state of pupilage, and I am bound to administer that law as it stands. (1. Strange, 244.) It would, I think, be very dangerous to relax the settled rules on this subject, and so long as with a very few exceptions the position of Hindu women is, as it is at present well known to be, I will not willingly sanction any act inconsistent with their declared status. The law is clear that, upon the death of the father, the widow ought to live with the sons, and it is laid down in I Strange, p. 36, that failing the father, the duty of selecting a suitable husband for the daughter lies first on the paternal relations, and failing
them on the mother. This view is also supported most strongly in 2 Strange pp. 28 and 30, and 1 Macn. H. L. pp. 103, 104, for, although one passage in the latter authority would seem to throw a doubt upon it, yet a subsequent passage in the next page clears away that doubt. The Chief Justice, before he left the Court, was also referred by a distinguished living authority to an untranslated work on Hindu law, which strongly supports the view I have stated. Besides this, I do not find that in her affidavit the mother any where denies the legal right of the brother, and there is certainly no denial of the allegation that the brother was refused leave to see the infant by the mother. Upon the whole, I am not satisfied with the conduct of the mother throughout the matter, and holding the rule of law to be as I have stated, the rule must in my opinion, be discharged without costs.—25th of February, 1859. S. C. Boulnois’ Reports of decided cases (part II.) page. 114.

Wells J., who had dissented from the rest of the Court, maintained his opinion.

PERSONS BETWEEN WHOM MATRIMONY IS PROHIBITED.

Vyavastha. 399. The marriage with a girl of a different caste is prohibited in the present (kali) age.*

"Undertaking sea voyages (to circumnavigate the ocean;) the carrying of a kamandalu (by a householder;) the marriage of twice-born men with damsels unequal in class:” (premising these and other practices, the Vrihat Nārādyya Purāṇa adds: “the wise have declared that these practices must be avoided in the kali age.” Áditya Purāṇa too: “The filiation of any but dattaka and ourasa sons is not admitted: the marriage of twice-born men with damsels not of the same class:” (premising these and other parts of law, proceeds,) “these parts (of ancient law) were abrogated by wise legislators, as the cases arose at the beginning of the kali age, with an intent of securing mankind from evil.”*

The marriage of a Shúdra with a woman of another caste has been prohibited by Manu himself, who says:—“For a Shúdra is ordained a wife of his own class, and no other: all produced by her shall have equal shares, though she have a hundred sons.”—Ch. 9. v. 157.

Vyavastha. 400. It is prohibited to contract marriage with a person who is a father's sapinda (a) or of the same gotra,† or of equal pravaras‡ with him, or who is one of the sapindas, or samánodakas§ of the maternal grandfather that is known by birth and family name to be descended from the same race as the maternal grandfather.

Authority. I. He who inadvertently marries, a girl sprung from the same original stock (gotra)† with himself, must support her as a mother.—Boudháyana. See Coleb. Dig. Vol. III., pp. 329.

II. A bráhmaṇa who marries a damsels of his own gotra† and pravaras,‡ ceases to be a bráhmaṇa, and the son born of that wedlock is a chandáśa.—Udváha-tattwa.

* A Sapinda is a relation within the sixth degree from one's self not inclusive, as defined in the following text: "The fourth person and the (two) rest share lepa or the remains of the oblation wiped off with kśaṅka grass; the father and the (two) rest share the oblation cakes; the seventh person is the giver of oblations: the relation of sapindas or persons connected by the oblation cake extends therefore to the seventh person (or sixth degree of ascent or descent.) See Coleb. Dig. Vol. III. p. 331. See also the definition of the sapinda related by the oblation of food, and that by consanguinity, in section XI, clause 1, of the Chapter on adoption.

† Gotra is the race (or family name) of an ancient sage, whose name converted into an adjective, is, as an epithet, prefixed to the word gotra to distinguish his gotra from that of another sage: thus the gotra of sage Kashyapa is called 'Kashyapa-gotra.' A person of the same gotra is a relation of the same race, or one descended in the direct male line from the same primitive stock or race.

‡ Pravara is one of the principal sages of a gotra or race by whom the founder of that race is distinguished from the rest. For instance in the gotra called Kashyapa (i.e. of Kashyapa) there are three Pravaras, namely Kashyapa, Avasára, and Noidrapa, of whom Kashyapa, the founder of that gotra, is distinguished from the other sages of the same name by having in his gotra, or being followed by, the sages Avasára and Noidrapa who characterise his gotra.

§ Of equal Pravaras— that is, descended from a gotra which have pravaras of the same number and name.

Sir W. Jones and Mr. H. Colebrooke have translated 'gotra' by 'primitive or original stock'; and 'pravara' by 'patriarch.' Mr. Sutherland has generally translated gotra by 'general family.'

§ The relation of Sapindas or kindred connected by the funeral oblations ceases with the seventh person; and that of Samánodakas, or those connected by a common libation of water, extends to the fourteenth degree; or, as some affirm, it reaches as far as the memory of birth and name extends. This is signified by the gotra or the relation of family name.—Mītākihārā pp. 351,352.
Authority. III. She who is not descended from (his) paternal or maternal ancestors within the sixth degree (Sapindas,) and who is not (known by her family name to be) of the same primitive stock (gotra) with his father (or mother,) is eligible by a twice-born man for nuptials and holy union.—Manu and Sattapate. See Manu, Ch. III., v. 5.

(a) The relation of sapinda extends as far as the seventh degree, as said in the following text: "The relation of sapindas or kindred connected by a common oblation ceases with the seventh person." Consequently the meaning is that, whatever female is descended from the race of one's maternal grandfather and the rest (is not to be married by him.) By the word 'cha,' (and, also,) it is meant that one who is of the maternal grandfather's race and known by birth and the family name* to be descended from one's mother's lineage is not also to be taken in marriage; others though from the same primitive stock as the mother (i.e. maternal grandfather) are eligible for marriage. This is the conclusion.—Kulāka Bhatta.

IV. Some do not hold that marriage should be contracted with a damsel of the mother's (i.e. the maternal grandfather's) race. One, however, may without hesitation, marry a girl descended from the same ancient sage or primitive stock (gotra) if she be not known by birth and (family) name (to be descended from the same race.*)—Vyāsa cited by Kulāka Bhatta. See Udvāka-tattva.

V. Medhātithi has, in the name of Vashishta, cited the subjoined text which prohibits marriage with a girl who is of the mother's gotra:—"If a twice-born man marry a girl of the same gotra or of the same pravara, or a maternal uncle's daughter, or a girl of the mother's gotra, he should perform the lunar penance (chandrāyana) after having entirely deserted her." But this text also relates to the case of a girl not known by birth and descent to be of the mother's (i.e. the maternal grandfather's) race.—Kulāka Bhatta.

* By the phrase 'known by birth and the family name' is meant one within the relation of samānodaka. Thus Vīmaţ manu: "The relation of samānodakas, or those connected by an equal or common libation of water, extends to the fourteenth degree; or, as some affirm, (it reaches) as far as the memory of birth and name extends.—See Mitākhārā, pp. 351, 352.
Authority. VI. Marriage must not also be contracted with a
damsel connected by an equal or common libation
of water (Sambodaka) with the maternal grandfather.—Uvodha-tattva.

VII. He who marries a daughter of his father's or of his mother's
sister, or a girl sprung from the same primitive stock (gotra) with his
mother, or descended from the same ancient sage (with his father,)
must perform the lunar penance, and, divorcing that wife, he must

VIII. One must not marry a wife of the same gotra or pravara, or
as far as the fifth in degree from the mother and seventh from the
father.*—Vishnu-sutra.

IX. A twice-born man may properly and legally marry, O, king! a
wife (leaving†) as far as the seventh on the father's side, and fifth on
the mother's side.†—Vishnu-purāṇa.

X. Girls descended from the father's or mother's friends (relations)
are not to be taken in marriage as far as the seventh and fifth respectively, as well as those of the same gotra or of equal pravara.*—
Nārada.

Consequently,—

Vyavastha. 401. The female descendants within the sev-
enth degree (inclusive) from the father, paternal
grandfather, and the rest, and the female descendants as far as
the fifth degree (inclusive) from the maternal grandfather and
the rest, also the female descendants within the seventh degree
(inclusive) from the father's friends (bandhus,) and his six
ancestors through whom those females are related,‡ and also
the female descendants as far as the fifth degree (inclusive)
from the mother's friends, and their four ancestors through
whom they are related,‡ are not to be taken in marriage.—
Uvodha-tattva.

* See Uvodha-tattva.
† Raghunandana's interpretation.
‡ These may be illustrated as follows—
The sons of a person's father's paternal aunt (father's sister,) the sons of his or her
I. The bridegroom and bride must be counted by the wise from that common ancestor (inclusive,) whose descendants separated in branches, (i.e. from whom branches of the family have issued.)—A text cited in the Udvâha-tattwa.

II. In counting from a (father's or mother's) friend, those male ancestors (only) must be enumerated whose descendants separated in branches; and not the female ancestors such as the maternal grandmother, paternal grandmother, and the rest, except the mother's aunts and father's aunts; for, in the text of Nârâda:—"Girls descended from the father's and mother's friends are not to be taken in marriage as far as the seventh and fifth degrees respectively."—the adjectives (seventh and fifth) are used in the masculine gender.—Udvâha-tattva. Such is also the doctrine of the Vîvâha-tattvârâjya.—See the last foot note of the preceding page.

father's maternal aunt (mother's sister,) and the sons of his or her father's maternal uncle (mother's brother,) are his or her father's bandhâs.—From each of these bandhâs inclusive are enumerated seven degrees in ascent from whom relationship is derived, thus:—1. The son of a person's father's paternal aunt,—2. that son's mother,—3. maternal grandfather,—4. maternal great-grandfather,—5. maternal great-great-grandfather,—6. the latter's father and—7. paternal grandfather. In like manner,—1. the son of a person's father's maternal aunt,—2. that son's mother,—3. maternal grandfather—4. maternal great-grandfather,—5. maternal great-great-grandfather,—6. the latter's father, and—7. paternal grandfather. The female descendants, as far as the seventh degree of and from each of the above enumerated persons, are not to be taken in marriage.

The sons of a person's mother's paternal aunt, the sons of his or her mother's maternal aunt, and the sons of his or her mother's maternal uncle are his or her mother's bandhâs. From each of these bandhâs (inclusive) five ascendant degrees, from whom relationship is derived, are enumerated as follows:—1. The mother's paternal aunt's son,—2. his mother (i.e. the mother's paternal aunt,)—3. his maternal grandfather,—4. maternal great-grandfather, and—5. the maternal great-great-grandfather. In like manner,—1. the mother's maternal aunt's son,—2. his mother (i.e. the mother's maternal aunt,)—3. his maternal grandfather,—4. maternal great-grandfather, and—5. maternal great-great-grandfather,—1. The mother's maternal uncle's son,—2. that son's father,—3. paternal grandfather,—4. paternal great-grandfather, and—5. paternal great-great-grandfather. The female descendants as far as the fifth degree of and from each of the above enumerated persons are not to be taken in marriage.
Vyavastha. 402. A dattaka son must not marry a girl who is connected as sapinda to his adoptive or natural father, or who is of the same gotra with either of them.

Authority. I. "She who is not connected as sapinda to his mother or father, and not belonging to the family (i.e. race) of either, is approved amongst the twice-born men, for espousal and connubial intercourse."—On account of the conjunctive particle 'cha (and) in the above text of Manu, the construction thereof is,—‘who is not connected as sapinda to his father (as well as mother);’—the term ‘father’ is used to exclude (from marriage) a female related as sapinda to, and belonging to the general family (gotra) of, the natural father also of an adopted son, although he exclusively belonging to the race of his adoptive father.—See Dattaka-chaṇḍrikā, Sect. IV. § 35.

II. Shūla-pāṇi also says: "The term father (in the above text) is used to prohibit one who has two fathers (as kṣetrajja and the rest) to marry a girl belonging to the general family (gotra) either of his natural or adoptive father, although he belongs to the general family of his adoptive father alone."

III. "As many degrees as there may be of forefathers, with so many, their own forefathers, let sons given and the rest associate the deceased. In order, their sons with two forefathers, their grandsons with (samam) one, (should do) the same. The fourth degree is excluded. This (relation of sapinda) extends to three degrees." According to this text of Kārshnajīni, it should not be argued that the relation of sapinda extends to three degrees, in the family of the natural father, by consanguinity, and in that of the adopter, through connection of the oblation cake, because the relation of sapinda in question does not apply to marriage, but is an universal relation of that denomination, predefined as extending to the seventh degree in the line of the father, and to the fifth in that of the natural maternal grandfather. Dattaka-chaṇḍrikā, Sect. III, § 19,20,21.—By parity of reason,—

Vyavastha. 403. A dattaka son should not also marry a girl who is related as sapinda or samānodaka to the father of his adoptive or natural mother.*

* See the definition of the two kinds of Sapinda in clause 1, section XI, of the chapter on adoption.
Because his (the dattaka son’s) relationship with the family of his adoptive mother’s father is created through connection of the oblation cake, and that with the family of his natural mother’s father exists by consanguinity.*

Vyavastha. 404. In the text of Manu and Shatatapa, already cited, the term twice-born is (specifically) inserted to exclude a shudra from being bound to avoid marriage with a girl of the same gotra as he; but a shudra is equally (with a man of any other class) prohibited to marry a girl related as sapinda or samanodaka.

Vyavastha. 405. It being ordained that shudras must avoid marrying girls related as sapindas, they must not marry girls within the seventh and fifth degrees as aforesaid.

Reason. For they also are included amongst the sapindas.

Vyavastha. 406. However, a girl who is not within three gotras (from the bridegroom) is not unmarriageable, though she be one related within the seven or five degrees as above described.†

Authority. I. ‘Though nearly related, a girl may be taken in marriage if she be beyond three gotras.—A text of the Matsya-purana, cited in the Udvasha-tattwa.

II. She who is not connected by the oblation-cake or libation of water, may be taken in marriage by a twice-born man, and also she who (though related) is not within three gotras.—Vrihat Manu, cited in the Udvasha-tattwa.

* See Section XI of the chapter treating of adoption.

† For instance, should the paternal great-grandfather of the man, who is to marry, be of the Kashyapa gotra, his daughter be of the Shandilya gotra, and her daughter be of the Vaishya gotra, and her daughter of the Savarna gotra, then the latter’s unmarried daughter who is of the Savarna gotra and beyond three gotras, namely, the Kashyapa, Sandilya, and Vaishya, may be taken in marriage by the man of the Kashyapa gotra.

Three gotras from a father’s or mother’s friend must be counted in the manner as directed in the Udvasha-tattwa above cited.
VYAVASTHA-DARPANA.

Three gotras of the descendants of a bandhu are in all cases to be counted from his own gotra (inclusive,) and those of the descendants of the ancestors of a bandhu, who is a father's or mother's maternal uncle's son, are also to be counted from his own gotra, but of the descendants of the ancestors of the other bandhus three gotras must be counted from their maternal grandfathers' gotras.*

Observation. "One should marry a girl who is not descended from the same ancient sage as he; he must avoid five (degrees) from the mother, (and) seven from the father; or three from the mother, (and) five from the father."—This text of Poithñasi is expounded by Raghu-nandana in the following terms:—"In fact, by the mention of three (degrees) &c. it is meant that it is more sinful to marry a girl from the fourth to the fifth degree, both inclusive, (on the mother's side,) and from the sixth to the seventh degree, both inclusive, (on the father's side:) otherwise, the other text of Poithñasi: "The daughters of the mother's sister and father's sister and of the mother's brother are sisters by law, they must not be taken in marriage," would be useless." Shaśapāṇi, however, holds that the avoiding marriage with girls as far as three and five degrees, (and marrying from the fourth and sixth degrees) relate to marriages of the āsura and other forms, or to the marriages of the kshatriyas.—So it is clear that according to both opinions, marriages of brāhmaṇas in the brāhma and other forms (as far as the āsura form) with damsels within the fifth degree on the father's side and third degree on the mother's side, are invalid; and, moreover, according to Raghu-nandana, it is more sinful.—Further, agreeably to Śūla-paṇi's opinion, marriages of such girls amongst any caste in the āsura and other forms, and amongst the kshatriyas in any form whatever, are valid, but according as expounded by Raghu-nandana such marriages are not only invalid, but also more sinful. The opinions of both these authors are however respected in Bengal.

Conclusion. In fact, as laid down by Śūla-paṇi, marriages of the kshatriyas, and those in the āsura and the rest of the forms of any other caste, with girls of the above description, do not appear to be invalid, inasmuch as his doctrine agrees in many respects with the above text of Sumantu, and is corroborated by the following texts:—

* See the Udvaha-sattra.
"One should marry a girl not related within the seventh degree, if such girl be not procurable, then a girl of the seventh degree; in her default, one of the fifth degree: this is the rule on the father's side Shákatáyana (says): a girl related in the seventh, sixth, fifth, third, or fourth degree on either side may be taken in marriage without an offence being committed."* 

"A girl beyond the seventh degree in relationship is preferable (to one of a nearer degree,) because the text, cited, says: 'If a girl beyond the seventh degree be not procurable, a man may marry a girl of the seventh degree;' in like manner, a girl beyond the fifth degree (on the mother's side) is preferable for marriage, because it is laid down in the above text that, a girl beyond the fifth degree not being procurable, one may marry a girl of the fifth degree: such is (the course to be adopted) on both sides.""—Keshava Vaiśjoyantí.

"It appears that whoever is married according to the custom of (his or her) country and the usage of the family, that (marriage) is always valid." Such is the doctrine of the Chaturvingshati (twenty-four sages).*

Vyavastha. 407. A step-mother's brother's daughter and his daughter's daughter are not to be taken in marriage.—Udváha-tattwa.

Authority. All the wives of the father are mothers, their brothers are maternal uncles, the daughters of the latter are sisters, and the daughters of these are nieces, both (therefore) are not to be taken in marriage, otherwise, they will be producing sankaras (mixed castes)—Súmantú. Ibid.

Although, the brother of a step-mother being an uncle, his daughter and daughter's daughter are (of course) sister and niece, (and as such are not to be taken in marriage,) yet as they have nevertheless been mentioned (in particular,) it must be concluded that marriage with these two only (out of the descendants of a step-mother's brother) should not be contracted.—Ibid.

Vyavastha. 408. A man is prohibited to marry a damsel who bears the same name as his mother.—Ibid.

**Authority.** Whatever be a person’s mother’s name, be it conceal-
ed or known, the girl who bears that name is called ‘bearing (that person’s) mother’s name.’ If he inadvertently takes (her in marriage,) he must atone for it, and performing the lunar pe-
nance he must forsake her entirely.—Matshya-súkta Mahó-tantra* cited in the Uddsáha-tattva.

**Remark.** As to the text of Rája-mártanda: —” Though born of a good family, if a girl be of the same name as (her bridegroom’s) mother, another name should be given her in marriage by priests with the consent of her parents”—it must be understood to be applicable to the case where the name is known after betrothment, as otherwise the above prohibition would be un-meaning or nugatory.—Raghu-naudana. Consequently,—

**Vyavastha.** 409. If after betrothment of a girl it be known that she bears the same name as the mother (of the man to whom she is betrothed,) then another name should be given her by priests with the consent of her parents, after which she may be taken in marriage, which in that case is not invalid.—See Uddsáha-tattwa.

**Vyavastha.** 410. It is prohibited to contract a marriage with a daughter of the spiritual preceptor (áchárjya,†) or of a pupil.”†—Ibid.

**Authority.** “The marriage with a girl of equal praváras, with a daughter of a pupil, or of the guru who instructs in the Vedas, is prohibited.”—A text of the Matshya-súkta† cited in the Uddsáha-tattwa.

---

* A hymn to Vishnu assuming the form of a fish: it is believed to be extracted from the Vedas.

† A pupil is he who receives instruction in the Vedas. The ácharjya is he who gives such instruction. Thus in the following text:—"The spiritual preceptor is he who in-
structs (his pupil) in the Vedas after investing (him) with the holy thread, whence is he
denominated ‘ácharjya.”—See ante. pp. 307,308.

By parity of reason, it seems also improper to marry a daughter of the spiritual pre-
ceptor who imparts a formula or mystical text of the tantra, or a daughter of a pupil in-
structed in that of the tantra.
Vyavastha. 411. A younger brother is prohibited to marry while his elder brother remains unmarried.—Ibid.

Authority. If a younger brother marry while his elder brother remains unmarried, he becomes pari-vetta,† such elder brother becomes pari-vinna,‡ the girl so married is pari-vedaniyā, the giver of a girl (in such marriage) is pari-dāyī, the priest who performs the rites (of such marriage) is pari-kartā: all of them are degraded (for sin.)—A text of Hārīta cited in the Udvāha-tattvā.

Vyavastha. 412. One ought not to supersede his elder brother in marriage, though permitted by him.§

Authority. A marriage is blamable even though contracted with the permission of the elder unmarried brother.—Prāyashchitta-viveka.

Vyavastha. 413. One however commits no offence if he supersedes his elder brother in marriage under any of the circumstances recognised in the following texts.§

Authority. I. There is no offence in superseding in marriage an elder brother who is gone to a foreign country, who is degraded (for sin.,) who is a beggar, or is devoted to the joga-shāstra (a.)—A text of Sātātāpa cited in the Udvāha-tattvā.

(a) ‘Joga’—is meditation consisting in the abstraction of the mind from worldly objects, and in the union of one’s jīvātmā¶ with the Holy Spirit (God.)

* An elder brother is one prior by birth, and born of a mother or of a step-mother equal in class with the father. Thus Manu: ‘Between sons born of wives equal in class and without any other distinction, there can be no seniority in right of the mother: seniority ordained by law is according to the birth.’ Here, however, an elder brother must be understood to be one not only elder by birth but also of the whole blood, inasmuch as it is laid down in the text of Chhāḍaṅga parishikṣa, cited at page 667, that a younger brother is guilty of being pari-vetta only when he marries before his elder brother of the whole blood.

† Pari-vetta,—one guilty of having married before his elder brother.

‡ Pari-vinna,—one passively guilty of being superseded by his younger brother in marriage.

§ See the Udvāha-tattvā.

¶ The soul, spirit, vital principle; the spiritual substance which renders bodies susceptible of motion, sensation, &c.
II. "One does not commit an offence by superseding in marriage his elder brother who lives in a foreign country, who is an eunuch or impotent, or eka-vrishṇa, or who is not of the same womb (i.) or who is a whoremonger, degraded, equal to a śūdra (e.) very much diseased, an idiot (o.) dumb, blind, deaf, humpbacked, dwarf, kunthaka (k.) very old, or who is not a householder (g.) or who is devoted to agriculture, or to the ruling power, or to increase wealth, or is one who acts according to his own wishes (j.) or is a kulata (u.) a mad man, or a thief." Though in a hurry, one must wait three years for (his elder brother who is) devoted to increase wealth, to the ruling power, or to agriculture, or (who is) gone abroad. If [the elder brother,] gone abroad, be unheard of (t.) the younger may marry after waiting for one year; and if he then return, the latter is to perform part of the lunar penance for purification from this sin.—A text of Chhándogya-parishishta cited in the Udváha-tattva.

(i) 'Foreign country,'—see the note at pages 546 and 547.

'An eunuch,'—See the chapter treating of exclusion from inheritance.

'Ek-vrishṇa,'—Having only one testicle: a kind of eunuch.*

'Not of the same womb,'—a brother born of a step-mother: consequently, there is no offence in contracting a marriage while a brother born of a different mother remains unmarried.*

(u) 'Kulata,'—one who goes to a different gotra or family: such is the interpretation of Náráyana Upádhyāya: by this he means that he whose gotra (race) is changed into that of another, such as a dat-taka or any other description of adopted son, is a kulata.*

"Accordingly, sons given and the rest do not incur the guilt of a pari-vettā and the like: for a text of Goutama recites: 'By marriage and the establishing of a consecrated fire, the offence of 'pari-vedana' does not attach to a half brother, a son given, and the son of a paternal uncle likewise.'—'To a half brother'] on the marriage and so forth of either of two brothers, by different mothers, the offence denominated 'pari-vedana' is not incurred. This is the meaning. 'A son given']

* See the Udváha-tattva.
It is meant that, although there be an elder brother in the family of the natural father, the adopted son is not, (should he marry and so forth,) a ‘pari-vetă,’ nor also by such previous marriage and the like, of the younger, is the elder a ‘pari vinna,’ or a person passively implicated in the criminal acts alluded to.”—Dattaka-mimánsá, pp. 129, 130.

(e) 'Equal to a Shúdra.'—It is declared by Manu: “Bráhmánas, who tend herds of cattle, who trade, who practise mechanical arts, who profess dancing and singing, who are hired servants or usurers, let the judge exhort and examine as if they were shúdras.*

(o) 'An idiot;'—a person deprived of the internal faculty, or incapable of discriminating right from wrong.—Mitákṣhara cited in the Udváha-tattva. See the chapter treating of the exclusion from inheritance.

(k) 'Kunthaka;'—indifferent to all affairs.*

(g) 'Not a householder;'—prohibited by law to have a wife, such as noishthika or perpetual brahma-chóris, hermits and bhikshus.*—See the foot notes at page 654.

(j) 'One who acts according to his own wishes;'—that is, who acts according to his own inclination regardless of the (ordinances of the) scripture and law.*

(t) 'Unheard of;'—that is, if good tidings (or the existence) of the elder brother gone abroad be not heard of, his younger may marry after having waited for one year; should the elder brother subsequently return, the younger, to atone for the sin committed in superseding his elder brother in marriage, must perform the expiation denominated 'Prójápatya'.*—Práyashchitta-viveka.

Remarks.
The waiting for three years for an elder brother gone abroad relates to the case where he is gone abroad, for purposes other than the acquisition of science and religious merit;* it being so declared in the subjoined texts of Vashistha and Goutama:—

Vashistha:—'Should a younger brother marry without waiting for his elder brother, gone abroad, he must perform the penance: it is proper for a person to wait twelve years for his elder brother who

* See the Udváha-tattva.
is gone abroad to obtain religious merit and property, and is often heard of. It is not (however) proper to wait (for an elder brother who is) a mad man, a sinner, leprous, degraded, impotent, or afflicted with phthisic or a like disease.'

Goutama:—"In the case of a bhrāmana elder brother (going abroad) for the acquisition of knowledge, the younger should wait for twelve years before contracting a marriage or commencing the worship of a consecrated fire: some ordain that he should wait for six years.'*

Hence it follows that,—

Vyavastha: 414. In the cases of persons of the bhrāmana, kshatriya, voishya, and shūdra castes, twelve, ten, eight, and six years should respectively be waited for.—Prayashchitta-viveka.

The author of the Ratnakara adds the following text of Goutama:—(the elder brother) being heard of, the younger should go to him, but he should refrain from doing so if he (the elder brother) has quitted the condition of a householder, and thus interprets it: 'The elder brother living abroad, the younger (brother) should go to him to cause him to marry and worship the consecrated fire; he should however refrain from doing so if he has quitted the condition of a householder.'†

Vyavastha: 415. The marriage of a younger sister is vitiated if contracted while her elder sister remained unmarried.*

Authority. I. A younger sister married before the marriage of her elder sister must be known (to be) 'agredidhishu,' and the elder sister to be 'didhishu.'*—Devala.

II. The husband of the girl denominatd 'agredidhishu' should, after undergoing the austere penance for twelve nights (d.) marry (n.) and give her away, and the husband of the didhishu must perform the austerest of penances, and having given (her) away to him, he should marry again.—Vashistha.
(d) 'Austere penance for twelve nights,'—that is, the penance denominated the 'parśka,' which must be performed, because the sin is great.*

(n) 'Should give her away,'—that is, he must give the younger sister to the husband of the elder. The elder sister must likewise be given to the husband of the younger. This, however, is declared by law for the sake of humiliation, and not for the purpose of cohabitation, for, a text of Sumantra in the chapter of marriage declares that they must not again be cohabited with. And a text cited by Bhava-deva Bhatta (ordains) that 'she who is deserted is to be supported with food and raiment.'*

Vyavastha: 416. Of all the girls, described, those only, though married, do not become wives, whose husbands are ordained to desert them and to perform penance to atone for the sin incurred in marrying them.)†

Authority. I. Thus desertion and penance being enjoined in (the marriage of) the descendants of the sapindas, and those sprung from the same ancient sage, the girls who are prohibited to be taken in marriage for unseen causes of defects do not become wives: consequently the defect of such marriage is not removed, nor is the girl so married capable of performing religious acts (in conjunction with the husband.)—Raghu-nandana.*

II. In the matter of marriage, as it is laid down in the text: 'he who inadvertently marries a girl sprung from the same original stock (gotra) with himself, must support her as a mother,' and as it is also heard (from the sages) that, if a girl of the same gotra and so forth be taken in marriage, she should be deserted, and that penance should be performed if a marriage be contracted with a girl of the same gotra: consequently, together with those, the girls related as mother's sapindas do not also become wives.—Kullīka Bhatta.—See the Udvāha-tattva.

* Udvāha-tattva.
† This will be known on perusal of the texts cited under the Vyavastha, Nos. 399—415.
VYAVASTHA•DARPANA.

. In expounding the text—'A Brähmana who marries a girl of her own gotra and pravaras,' &c. Shúla-páñi, author of the Práyashc-śivēka, says: 'the mention of the girls of the same gotra or pras is illustrative of all the girls not to be taken in marriage.'—iha-tattva.

. Hence the lunar penance must be performed even on the mar-riage of a girl of a different caste.—Raghu-nandana. See Ibidem.

MARKS. All of the girls not to be taken in marriage being placed by Shúla-páñi on an equal footing with the girls of the same gotra or pravaras, it follows that, according to his opinion, do not become wives as well as those of the same gotra or pravaras.

417. Girls of visible defects do, however, become wives, although it be prohibited to mar-riage.

Girls of visible defects are prescribed by Manu as follows:—Connecting himself with a wife, let him studiously avoid the ten leading families, be they ever so great, or ever so rich, in kine, goats, gold, and grain. The family, which has omitted prescribed duties of religion; that, which has produced no male children; that rich the veda has not been read; that, which has thick hair on body; and those, which have been subject to hemorrhoids, to sis, to dyspepsia, to epilepsy, to leprosy and to elephantiasis. him not marry a girl with reddish hair, nor with any deformities; nor one troubled with habitual sickness; nor one either no heir or with too much; nor one immoderately talkative, one with inflamed eyes. Her, who has no brother, or whose name is not well known, let no sensible man espouse, through fear in the former case,) her father should take her first son as his (to perform his obsequies ;) or (in the second case) lest an illicit age should be contracted.'—Ch. III. vs. 6, 7,8&11.

418. A girl with the name of a constellation, of a tree, or of a river, and so forth, though

But—'Let him choose for his wife a girl, whose form has no defect; who has an able name; who walks (gracefully) like a phœnicopterus or like a young elephant; hair and teeth are moderate respectively in quantity and size; whose body has its softness.—Ibid. v. 10.
with defects invisible, being included amongst the texts descriptive of visible defects, is reckoned as being with visible defects; consequently, there is no apprehension of their not becoming wives (when married.)

**Description.** A girl with the name of a constellation, of a tree or of a river, and so forth, is described by Manu:—

"Nor one with the name of a constellation, of a tree, or of a river, of a barbarous nation, or of a mountain, of a winged creature, a snake, or a slave; nor with any name raising an image of terror."—Ch. III. v. 9.

**Authority.** In those girls whom it is allowed or prohibited to marry on account of good or bad qualities as of 'the family which omitted prescribed acts of religion,' there is however no want of wifeship, (inasmuch as such girls become wives,) though married in violation of the above rule. Consequently Manu has separated the texts, "be they ever so great or ever so rich," &c. The prohibitory text, "nor one with the name of a constellation, of a tree, or of a river," and so forth, though included amongst the above texts, does not deprive a girl (falling within the description thereof) of her being the wife of the man to whom she is married.—**Kullaka Bhatta's commentary on Manu.**

The opinion of Raghu-nandana may be said to be wrong to the extent in which he differs from the above.—See the Udvthha-tattva.

In certain families in Bengal marriages are seen to take place in violation of the above Vyavasthas: such marriages can only be said to be in use according to the doctrine of the Chaturvingsali (24) sages already cited. (*ante*, p. )

**Bigamy and Polygamy.**

**Vyavastha.** 419. Bigamy and polygamy appear also to have been prohibited to men, unless for any of such causes as are mentioned in the following texts.

**Authority.** "A wife, who drinks any spirituous liquors, who acts immorally, who shows hatred (to her lord,) who is incurably diseased (p,) who is mischievous, who wastes his property, may at all times be superseded by another wife.—A barren wife may be superseded by another in the eighth year; she whose children
are all dead, in the tenth; she, who brings (only) daughters, in the eleventh; she, who speaks unkindly, without delay.—But she, who, though afflicted with illness, is beloved and virtuous, must be never disgraced, though she may be superseded by another wife with her own consent.”—Manu. Ch. IX. Vs. 80—82.

(p) "Incurably diseased,"—afflicted with leprosy or the like.—Kulāka Bhatta.

II. "One who drinks inebriating liquors, who is (incurably) diseased (b), who is quarrelsome (m), or barren, who wastes his wealth, who speaks unkindly, who brings forth only daughters, may be superseded by another wife; and so may she who manifests hatred to her husband."*—Jānyavalkya cited in the Vivāda-bhāngārṇāva.

(b) ‘Diseased,’—infected with a lasting malady.*—Mitākṣhara.

(m) ‘Quarrelsome,’—contentious.*—Ibid.

“If his wife be virtuous, and have borne a son, let not a man contract another marriage, unless he do so on the loss of his wife or son.”†—A text of Apastamba cited by Kulāka Bhatta.

In the case of inclination to marry again without a cause as above, a man might marry more than one wife, according as directed in the texts subjoined:

“For the first marriage of the twice-born classes a woman of the same class is recommended; but for such as are impelled by inclination to marry again, women in the direct order of the classes are to be preferred: "A śālavā woman only must be the wife of a śālavā; she and a Voishya, of a Voishya; they two and a Kshatriya, of a Kshatriya; those and a Brāhmaṇi of a Brāhmaṇa."—Manu, Ch. III, vs. 12, 13.

But marriage with a damsel of a different caste has been prohibited in this (Kali) age.—See ante, p. 656.

Hence it can be fairly concluded that bigamy and polygamy have been (though indirectly) prohibited to men in the present age, except

for any of the above causes; it is nevertheless argued by the modern 
 prosecute that, marriage with any woman of a different class being proh-
bited in the present age, it necessarily follows that a plurality of wives 
of the same class is admissible; and nothing is more common, espe-
cially among the kulin, or the highest caste of brahmanas, though such 
pernicious practice is admitted by good Hindus to be reprehensible.

Vyavastha. 420. In the event of a man marrying a se-
cond wife, the law enjoins him to satisfy the 
first by paying her the sum equal to the expenses of his second 
marrige; but if any stri-dhan have been bestowed on her, then 
half of the expenses should be given her.*

Authority. Thus Jānyavalkya:—“To a woman, whose hus-
band marries a second wife, let him give an equal 
sum, as a compensation for the supersession, provided no stri-dhan has 
been bestowed on her: but, if any have been assigned, let him al-
lot half.”†

THE DUTY OF A HUSBAND GOING ABROAD TO HIS WIFE, 
AND OF HIS WIFE TO HIM.

Vyavastha. 421. A husband going abroad is to assure a 
fit maintenance to his wife, but even if he live 
abroad without settling her maintenance, she cannot desert 
him, nor is she warranted to act so that it may render 
her fit to be deserted.‡

Authority. Should a man have business abroad, let him assure 
a fit maintenance to his wife, and then reside (for a 
time) in a foreign country; since a wife, even though virtuous, may 
be tempted to act amiss, if she be distressed by want of subsistence.—
While her husband, having settled her maintenance, resides abroad, 
let her continue firm in religious austerities; but, if he leave her no 
support, let her subsist by (spining and other) blameless arts.—If he

† Let him allot half.—The allotment of a moiety implies that the other moiety is com-
pleted by the woman’s separate property (Sri-dhan)—Maheshvara. Coleb. Da. bhd. p. 64.
‡ Vide Coleb Dig. Vol. II. pp. 434, 472, 486; and Str. H. L. Vol. I. p. 46.
live abroad on account of some sacred duty, let her wait for him eight years; if on account of knowledge or fame, six; if on account of pleasure, three: (after those terms have expired, she must follow him.)—Manu, Ch. IX., vs. 74—76.

A husband absent on account of some sacred duty, such as executing the command of his spiritual preceptor, or the like, must be expected for by his wife during eight years; after that term has expired, his wife must follow him; as directed by Vashishta.*—Visvada-bhangaravaha.

II. Vashishta:—"The wife of a husband who lives abroad, must wait for him eight years; after that period she must follow him, (giving notice thereof) to five (persons.)."*—Ibid.

"If on account of knowledge" he must be expected for six years; "if he live abroad on account of fame" to be acquired by the display of his own knowledge, (he must) also (be expected) for six years; but if he go abroad to enjoy another wife and so forth, for three years.*—Kulśaka Bhatta.

FOR WHAT FAULT A WIFE MAY BE LAWFULLY DESERTED.

Vyavastha. 722. A husband may desert his wife for a time or for ever on account of any of the faults mentioned in the following texts.*—Ibid.

Authority. I. She, who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture.—For a whole year let a husband bear with his wife, who treats him with aversion; but, after a year, let him deprive her of her separate property and cease to cohabit with her.—Even though a man have married a young woman in legal from, yet he may abandon her, if he find her blemished, afflicted with disease, or previously deflowered, and given to him with fraud.—If a wife legally superseded, shall depart in wrath from the house, she must either instantly be confined, or abandoned in the presence of the whole family.—Manu. Ch. IX., vs. 72, 77, 78, & 83.

II. A man may exclude from his bed, or from pilgrimage (for the term is explained in both senses,) a wife who is afflicted with leprosy, degraded from her class, barren, or insane, whose courses are stopped, or who is wicked; but he may not exclude her from all business.*—Devala—Vivāda-bhāngārṇava.

III. A man should avoid her who has destroyed an embryo, has criminally conversed with a man of low class, with a pupil, or with a son, is addicted to drinking or to brawls, or wastes property or (stores of) grain.*—Hárīta. Ibid.

IV. That a woman who follows her own will should be forsaken, is ordained by the law; but let no man slay his wife, or mutilate her person. Vivasvāt† declared that a woman wilfully disloyal should be forsaken, not slain nor disfigured; a man should avoid the slaughter of a woman.*—Manu. Ibid.

V. From connubial intercourse, from pilgrimage, from what pertains to acts of religion, these four should be rejected, (namely,) one who yields herself to her husband’s pupil, or to his spiritual parent, and especially one who attempts the life of her lord, or who converses with the vilest (of men.)*—Vasishtha. Ibid.

VI. It is a crime in them both, if they desert each other, or if they persist in mutual altercation, except in the case of adultery by a guarded wife. Let a man banish from his house a wife who embroils all (his) wealth under pretence of female property, or who procures an abortion, or who wishes the death of her husband.—Nárrada. Ibid.

Vyavastha. 423. Without any of the faults recognised by the law, as a bove, a wife must not be deserted.

Authority. I. No atonement is ordained for that man who forsakes his own wife through delusion of mind, deserting (her) illegally; nor for him who forsakes a virtuous son.*—Devala. Ibid.

II. A husband who abandons an affectionate wife, or her who speaks not harshly, who is sensible, constant, and fruitful, shall be brought to his duty by the king with a severe chastisement.*—Nárrada. Ibid.

† Titre of Skārya or Skṛyā (the sum.)
III. A husband deserting a wife endowed with excellent qualities, to connect himself with another wife and so forth, incurs a severe chastisement; that is, punishment of a thief: for, on the subject of punishment of robbery Vishnu says:—"The man who deserts a faultless wife, (shall suffer the same punishment.)"—Vistada-bhangarnava. Vide Coleb. Dig. Vol. II. pp. 414, 415, 420, & 423.

IV. He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part (of his wealth, or, if poor) to provide a maintenance for that wife. —Jagnyavalkya. See Ibidem.

V. But she, who is averse (a) from a mad husband, or a deadly sinner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes (i), must neither be deserted, nor stripped of property.—Manu. Ch. IX. V. 79.

(a). 'Who is averse'—that is who attends not.—Kulikèa Bhatta. 'Aversion from a husband,'—want of diligent attention, not absolute desertion.—Jagannath. See Coleb. Dig. Vol. II. pp. 412, 413.

(i) 'Afflicted with such maladies as punish crimes']—afflicted with leprosy or a similar sinful disease.—See the chapter treating of exclusion from inheritance.

WHAT HUSBAND MAY BE DESERTED.

Vyavastha'.

424. A wife may desert her husband when he is an outcast or degraded.*

Authority.

I. A husband who is not an outcast should not be forsaken by women desirous of happiness in another world.*—Srimat-bhagavata.

* Vide Coleb. Dig. Vol. II. pp. 413, 470.

Sis William Macnaghten says:—"Insanity, impotence and degradation, are, perhaps, the only circumstances, under which her (a wife's) desertion of her husband would not be considered as punishable offence." It does not, however, appear from any text book that a husband's insanity is a justifiable ground for his wife's deserting him. The text of Manu (cited in Colebrooke's Digest. Vol. II. p. 412,) which is referred to by the learned gentleman as authority for the above opinion, speaks of avarice from a husband who is mad, degraded, an eunuch, impotent or afflicted with leprosy or a like disease; and Kulikèa Bhatta interprets the phrase 'She who is averse from a husband,' by 'She who attends not a husband.' Jagannath (author of the original of the said Digest, q. v.) follows Kulikèa, and thus interprets the phrase: 'aversion'—want of diligent attention, not absolute desertion.'—See ante, p. 740.
It being shown that a husband who is not degraded may not be forsaken, it is implied that it is not incompetent to a wife to desert her husband when degraded.

Devāla adds certain other circumstances under which also, according to his dictum, a wife may desert her husband. They are as follows:—

II. "A husband may be forsaken by his wife, if he be an abandoned sinner (a), and heretical mendicant, or impotent, or degraded, or afflicted with phthisis (i), or if he have been (long) absent in a foreign country" (u)—Vivāda-bhangārṇava.

(a) "Abandoned sinner"] expelled, in the legal form, from virtuous intercourse.*—Ibid.

(i) "Afflicted with phthisis"] suffering under the disease called phthisis.*—Ratnākara. See Ibidem.

(u) "If he be absent in a foreign country," if he have gone to a foreign region.*

III. "If the husband be missing, dead, quit the condition of a householder, be impotent, and degraded,—in (any of) these five calamities, it is lawful for a woman to have another husband."—Thus Parāśara declaring it lawful for a woman to take another husband in case her (former) husband be in one of the said circumstances, a fortiori then it must be inferred that according to his opinion a woman may desert her husband when so circumstanced.

The opinion universally approved of, however, is that a husband who is degraded or an outcast may be deserted with impunity.

But although a married pair can desert each other under the circumstances above noticed, yet desertion does not render their marriage dissolved; for Manu says: "Neither by sale nor desertion can a wife be released from her husband: thus we fully acknowledge the law enacted of old by the lord of creatures."† Nor is the marriage dissolved by the natural death of either of them, for then the person surviving, if without a son, must, as widow or widower of the deceased, perform the funeral obsequies and continue to offer the oblation of food and libation of water to the manes of the deceased periodical-

† Chapter IX. v. 46.
ly and annually as prescribed by the law, and if there be a son, the survivor is still enjoined by the law to offer the libation of water to the manes of his or her deceased consort. In the case of civil death also, the relation of husband and wife is not absolved, for if both of them be so circumstanced, they are still husband and wife; if one only, he or she can join the other either in the degraded state (in which case they both are regarded as civiliter mortuus,) or after being purified by expiation; on the other hand, the person who was not civiliter mortuus, can join the other, who is so, sharing his or her fate; and in all of these (latter) three cases the dormant relation is revived. The circumstance of one of the married couple dying in the state of degradation unatoned for, and the other remaining pure at that time, is the only one that causes absolute dissolution of their marriage or the relation of husband and wife, as then ceases entirely all connection of the deceased with the survivor, who in that case is not to perform the deceased’s funeral obsequies and to offer periodically and annually the oblation of food and libation of water to his or her manes. Thus SANKHA and LIKHITA:—“Of him who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.”—The Brahma-purāṇa too says: “Of degraded persons there shall be no cremation, nor funeral sacrifice, nor gathering of their bones.”

ADULTERY.

Vyavastha. 424. Adultery is a criminal offence, not a civil one.†

Consequently,—

Vyavastha. 425. An action for damages, brought by the husband of the adulteress, against the adulterer, will not lie; but an action by him is cognizable, if brought for punishment of the adulterer.†


Colebrooke, cited by Strange (App. 33,) so also the Regulations, following the Mahomedan law in this particular, treat this offence as a crime against society, and not against the individual, but they require that the husband shall stand forward to prosecute. There is a case (cited in Str. II. App. p. 34) in which (Pandit) Nārāyaṇa gave his vyavastha
Vyavastha. 426. The ruling power, however, can impose a pecuniary fine with or without corporal punishment according to peculiar circumstances.*

The effects of adultery will be seen in the chapter treating of exclusion from inheritance. q. v.

in these terms: "The husband, in the case in question, has a claim to be reimbursed by the adulterer the expenses of the Gata shraddha, and of the ceremonies attending his marriage, and, if desirous of another wife, a right to recover those also of a second marriage, to be computed according to the custom of the country, the times, his caste, and any special circumstances."—He cited Manu and a number of other books for authority.

The remarks upon this Vyavastha by Colebrooke and Ellis are as follows:—

"If the books cited contain passages that support this opinion, I have not been successful in searching for them. At the beginning of the answer, reference is made to prevailing customs, on which probably it is founded, rather than on express provisions of the law." C.

"Nārāyana says: "it is in conformity with Manu, &c., and, no doubt, in equity, in the payment of the marriage expenses of the husband, deprived of his wife by the seducer cannot be condemned; but I know not that it is any where prescribed by law. The punishment for every species of adulterous intercourse is most minutely laid down; and the act is, in all its bearings, considered solely as a criminal offence." E.

* Vid. Manu, Ch. VIII., vs. 382—384.
SECTION II.—STRĪDHAN.*

STRĪDHAN DEFINED AND EXPLAINED.

I. What was given before the nuptial fire, what was presented in the bridal procession (a), what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman.†—MANU and KĀTYĀYANA.

II. What was given before the nuptial fire, what was presented in the bridal procession (a,) her husband’s donation (i,) and what has been given by her brother or by either of her parents, is termed the six-fold property of a woman.†—NĀRADA.

REMARK. Here the number six must not be considered as restrictively used; since it will be hereafter declared that woman’s peculiar property is of many descriptions.—Dā. kra, sang. pp. 32, 33.

(a) KĀTYĀYANA explains these:—“What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the women’s peculiar property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from the paternal† (abode to her husband’s dwelling,) is instanced as the separate property of a woman, under the name of gift presented in the bridal procession.”†

“...the time of their marriage,...”—that is, the time occupied by the ceremony, commencing with the performance of the funeral obsequies for departed ancestors, and concluding with the (bride’s) abhi-vāda (prostration) at the feet of her husband. Property received during this time is denominated youtaka or joutaka (marriage present,) conformably to the meaning of the root ‘yu, or ju’ which signifies to mix, and the mixture here alluded to is that which results from the union by marriage of

* A woman’s peculium, or her own separate or peculiar property.
‡ Since the term “paternal” is derived from a complex expression, of which one member only is retained, the presents, which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.—Dā. bha, p. 70.
the man and woman, who become as it were one and the same body. The following passage of scripture which declares: “Her bones become identified with his bones, flesh with flesh, skin with skin.”—Dā. kra. sang. p. 33.

(i) ‘Her husband’s donation (dāya)’ is wealth given (datta) to her by her husband; [not, as the word might be supposed to signify, the heritage of her husband.] For Manu and others notice that which is given (datta) to her by him, without mentioning his donation (dāya,) and Nārada specifies donation (dāya) without any separate notice of (that which is) given (datta.) In other instances also, ‘husband’s donation’ is used for wealth given by the husband. Thus Kārvāyanaka says: ‘Let the woman place her husband’s donation as she pleases, when he is deceased: but, while he lives, she should carefully preserve it, or else [if unable to do so] commit it to the family.* So the text of Vāsaka, concerning the limits of the value which may be given by her husband, [exhibits the same term:] ‘A present, amounting to two thousand (panas) at the most, may be given to a woman, out of the wealth; and whatever property is given to her by her husband, let her use as she pleases.’

“What has been given to a woman (before or after her nuptials,) by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband’s marriage to another wife (u) is denominated a woman’s property.”*—Jāgnyavalkya.

“What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband’s espousal of another wife (u,) what has been given to her by kindred (e,) as well as her perquisite (k,) and gift subsequent (o,) are a woman’s separate property.”*—Vishnu.

(u) That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife (with the assent of the first.*)

(e) The term ‘kindred,’ in the above text of Vishnu, intends maternal uncles and others; for the father and the rest are specified by the

appropriate terms. But by the word 'kindred' in the other texts regarding *stři-dhan*, her father and mother are denoted. Hence the meaning is this; any thing received subsequently to the marriage, from (maternal or paternal uncles or other) persons who are related through the father or the mother, or from those two parents themselves; or so received from the husband, or from his family, namely, her father-in-law and the rest; is a gift subsequent.—See Coleb. *Ḍā. bẖā*. pp. 69, 70.

(o) **Kāṭyāyana** defines a 'gift subsequent.'—What has been received by a woman from the family of her husband, at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred.* Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhāgav pronounces to be a gift subsequent.†

(o) **Kāṭyāyana** describes the perquisite or fee—“Whatever has been received as a price of workmen on houses, furniture (1.), beasts of burden (2.), milch animals (3.) and ornaments, is denominated a fee or perquisite (4.).†

Any thing which is given to a woman by the mother or father of her husband in token of affection, and that which is given in return of her humble salutations, is called wealth gained by loveliness.—Kāṭyāyana.—Coleb. Dig. Vol. III. pp. 550, 570, 571.

* * "From the family of her kindred."*—Here by the term "kindred" her father and mother are (also) intended. Therefore any thing received after the marriage from persons related through his husband, such as her father-in-law and others, or from persons related through the father and mother, namely, maternal and paternal grandfathers, is termed a gift subsequent. Such is the meaning of the first text; and the meaning of the second text is that any thing received posterior to the marriage, either from her husband, or from her parents, is also termed a gift subsequent.—Ḍā. kra. sāng. pp. 38, 39.


(1) *Furniture,*—brooms, &c.—Ḍā. kra. sāng. p. 37.
(2) *Beasts of burden,*—bullocks, &c.—*Ibid*.
(3) *Milch animals,*—milch cows, &c.—*Ibid*. p. 38.
(4) *That is termed a fee (or perquisite) which a woman receives from others as a dourceur for influencing her husband, an architect or other description of artist, to expedite the completion of their business, such as the construction of a house or other kind of work. It is the price in fact which she receives for sending her husband (to the employment.)—Ḍā. kra. sāng. p. 38.
Her subsistence (k,) her ornaments, her perquisite (o,) and her gains (g,) are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it, unless in distress."—Devala.

(k) "Subsistence"—What remains of that which is given to her for her food and raiment.

(g) "Gains"—interest on loans and so forth.—Commentary on the Dáya-bhága by Chúrá- mañi, Srí-krishña, and others.

"Gains"—a treasure discovered, &c.—Srí-krishña.—See Dá. kra. sang. p. 38.

Ornaments are the exclusive property of a wife, and so is wealth given to her by her kinsmen or friends, according to some (legislators.)—Aśvastamba.

Such ornamental apparel as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves; they who divide it among themselves fall deep (into sin.)—Manu and Vishnu.

The whole of the ornaments worn by a wife with the assent of her husband is her own (property,) although they were not given by the husband.—Medháitthi cited by Raghunandana.

The assent of her lord is indispensably necessary; and it is also requisite that this apparel should have been the several property of her husband, as declared by Manu:—"A woman should never make a hoard from the goods of the kindred (which are) common to (her and) many; or even from the property of her lord, without his assent."—Coleb. Dig. Vol. III. p. 571.

"Whatever is presented at the time of the nuptials to the bridegroom, intending (the benefit of the bride,) belongs entirely to the bride, and shall not be shared by kinsmen."—Vyása.*

Intending.]—Designing, that it shall appertain to the bride. It is not meant that the property becomes hers, even without such intention. Accordingly the time of nuptials is here stated illustrative-
ly, and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify, that it must be at the time of the nuptials—"What is presented to the husband of a daughter, goes to the woman, whether her husband live or die, and, after her death, descends to her offspring." Here the giver's intention is not specified, because it is implied by the word 'daughter.'

The expression of 'before the nuptial fire' occurring in the text (of Kātyāyana) before cited, and that 'at the time of the nuptials' in the text above quoted, are both illustrative. Since whatever is delivered in the hand of the bridegroom intending the benefit of the bride becomes hers, such intention must therefore be considered as the foundation of her property therein. The mention therefore of 'the bridegroom' must be taken figuratively, for wealth delivered into the hand of any other with that intention, would equally become the exclusive property of the bride.—Dā. Kra. Sang. p. 34.

Vyavastha: 427. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, (as specified by Manu and others) is not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property.

Vyavastha: 428. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

Authority. That is declared by Kātyāyana: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, (than the kindred, d) is always subject to the husband's dominion. The rest is pronounced to be the woman's property."

(d) Over that, which has been received by her from 'any other than the family of her father, mother, or husband, or has been earned by her in the practice of mechanical art, her husband has dominion

---


A woman's property may then be briefly defined to be that wealth which independent of her husband's control she has a right to dispose of at pleasure, recognised as this right is by law which Kātyāyana has declared. (Dā. kra. sang. p. 39.)—See the last paragraph of his page.
and fall control. He has a right to take it, even though no distress exist. Hence, though the goods be hers, they do not constitute woman's property, because she has not independent power over them, (Dā. bhā. p. 75;) and because, according to the above text of Kātyāyana the husband has absolute dominion over that property.*

During her husband's life, a woman has also no absolute dominion over the property given by her by him; and she has not even after his death the power of making a gift, &c., of the immovable property given by the husband. That is laid down by Kātyāyana and Nārada:—

"Let the woman place her husband's donation as she pleases, when he is deceased; but, while he lives, she should carefully preserve it, or else (if unable to do so,) commit it to the family."—Kātyāyana.

"What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property."†—Nārada. Consequently,—

Vyavastha. 429. The movable property given by a husband does not become absolute Strī-dhan only so long as he lives; but the immovable property given by him does not become so even after his death.

Vyavastha. 430. The other descriptions of Strī-dhan defined in the texts cited, namely,—the wealth received at the nuptial fire (1),† presented in the bridal procession (2),‡ given by the father (3,) received from the father's relatives (4,) given by the mother (5,) received from the mother's relatives (6,) property received from the husband's relatives (7,) presented on her husband's espousal of another wife (8,) the gift subsequent (9,)‡ subsistence (10,)‡ ornaments (11,) fee or perquisite (12,)‡ gains,‡ (13,) and whatever is given to the husband or any person intending the benefit of the woman (14,) are Strī-dhan even during the life of husband.

* At present however, all those descriptions of Strī-dhan, excepting only the immovable property given by a husband, are considered and used as absolute Strī-dhan.—See Macn. H. L. Vol. I. pp. 40 & 112.
‡ The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but while he is alive, she should carefully preserve it. This is intended as a caution against profusion.—Coleb. Dā. bhā. p. 73.
‡‡ Explained at pages 681 & 683.
**Vyavastha.** 431. The husband has authority over that which the woman has obtained from any other than the family of her father, mother, or husband, and in that which she has gained by the exercise of an art, such as painting or spinning. He is entitled to take it even without the occurrence of any distress.*

Therefore, notwithstanding the woman has ownership in both descriptions of property, she has not independent power in regard to it; on the contrary, it appearing from the text that her husband has authority over such property, his permission authorising the disposal of it must be obtained by the woman.*

**Vyavastha.** 432. Save and except the wealth of the above two descriptions and that which has been given to her by her husband, a woman is at liberty to dispose of all other descriptions of Stri-dhan by gift, mortgage, sale, and so forth, independently of her husband, who has no power to take the same without being in distress.*

**Authority.** That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of her affectionate kindred (n.) The independence of women, who have received such gifts, is recognised in regard to that property; for it was given by their kindred to soothe them and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immovables (b.)—Kátyáyana.

---

(n) That which is received by a married woman from the family of her husband, or from the family of her parents, and by a damsel from the family of her parents, is the "gift of affectionate kindred." Such is the meaning.—Dá. kra. sang. p. 41.

What is obtained from kind relations, that is, persons of her father's, mother's, or husband's family, is the gift of her affectionate kindred. Dáya-bhága, p. 76 § 25;—Dáya-tattwa. p. 41.

(b) "Even in the case of immovables," relates to immovable property other than that which has been bestowed upon her by her husband, for a prohibition exists against the gift or sale by a woman in regard to immovable property given to her by her husband.—Dá. kra. sang. pp. 41, 42.

Consequently,—

Vyavastha. 433. Even after her husband's death, a woman is incompetent to dispose of by gift, sale, and so forth, the immovable property given to her by her husband.†

Authority. But in the case of immovables bestowed on her by her husband a woman has no power of alienation by gift or the like. So Nárada declares: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property." It follows from the specific mention of "given by a husband;" that any other immovable property, except such as has been given to her by him, may be aliened by her. Else* (if this text forbid donation in the case of immovables in general,) the preceding passage concerning the power of women in respect of donation and of sale, "according to their pleasure even in the case of immovables," would be contradicted.—Dáya-bhága, page 76 § 23.

* 'Else;'—that is, if this text forbid donation in the case of immovables in general,—Coleb. Dá. bhd. p. 76.

† Vide Dá. kra. sang. pp. 41. 42;—Coleb. Dá. bhd. p. 76.
Authority. So Náráda declares:—"What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property."*

Vyavastha. 434. As regards, however, the movable property given by a husband, a woman is restrained from disposing of it by gift, &c., during his life only, after which she becomes vested with power to do so.

Conclusion. A caution against a woman’s profusion, during her husband’s life, of the property given to her by her husband being announced by the text—“but, while he lives, she should carefully preserve it, or else commit it to the family,” and the text of Náráda above cited perpetually prohibiting alienation of the immovable property only given by a husband, it necessarily follows that, after her husband’s death, a woman has power to alienate the movable property given to her by him.—See ante p. 686.

Vyavastha. 435. In a famine or other distress, or for the performance of a religious act indispensably necessary, a husband can take his wife’s Strí-dhan even though it be of the absolute nature, and he is not liable to make good that property to her: he cannot, however, take it in any other case.

Authority. However, if the husband has no means of subsistence, without using his wife’s separate property, in a famine or other distress, he may take it in such circumstances, but not in any other case.—Dá. bhú. pp. 76, 77.

So Jáonyavalkya declares: “A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint† (m.)

† The last hemistich of this verse is not the same in the Dáya-krama-sangraha and Dáya-tattva as in the Dáya-bhúya, wherein it is “na strioi dśtamarkati,” (he is not liable to make good to the woman,) whereas the reading inserted in the two former books is “máhámo dśtamarkati” (he is not liable to make good unless willing:) this latter reading is considered to be more proper and reasonable.
(m)  "While under restraint;"—which a creditor or other person imposes on him for the purpose of recovering his right, being debarred at the same time from ablution, from food, &c.—Ḍā. kra. sang. p. 42.

Kāṭyāyana has declared the husband (and the rest) to have no right to the use of the woman's separate property as before described, during the non-existence of any such calamity as a famine or the like:—

Vyavastha. 436. Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest (y,) and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay merely the principal (r) when he becomes rich. But if the husband have a second wife, and do not show honor to his first wife, he shall be compelled by force to restore her property, though amicably lent to him (l.) If food, raiment (s,) and dwelling (a) be withheld from the woman, she may exact her own (h,) and take a share (of the estate) with the co-heirs (i.)

(y)  "Make it good with interest;"—that is, the woman's separate property taken by force must, in the form of a loan, be rendered with interest: the words 'with interest (sa-vriddhim)' must not be supposed a discriminative of "stṛ-dhan (the woman's separate property,)" for supposing this to be the case, sa-vriddhi would be the proper form in which the word would appear.†

(r)  "Merely the principal."—Here the insertion of the word "merely" is intended to preclude (the payment of) interest.

(l)  "But if" &c.—the meaning of which is, that if the husband, after making use of the separate property of one wife, reside with another

† Ḍā. kra. sang. pp. 44, 45.
wife, and neglect the former, he shall be compelled by the ruling power to restore such property, even though it had been amicably lent.*

(a) ‘Food and raiment.’—Should the husband not allow his wife the necessaries of life, food, and clothing, then she may, if immaculate, require the supply of food and raiment which is her due.*

(h) ‘She may exact her own;’—that is, her due supply of food and raiment.—Shri-krishna’s commentary on the Dáya-bhága. Vide Coleb. Dá. bhá. p. 77.

(a) ‘Dwelling;’—place of residence.*

(i) ‘A share;’—that is, on the death of her husband, she is to receive from his co-heirs, his younger brother, and the rest, the share to which he was entitled.*

Vyavastha. 437. What has been promised to a woman by her husband, as her exclusive property, must be delivered by his sons, provided she remain with the family of her husband; but not if she live in the family of her father.†—Kátyáyana.

Vyavastha. 438. There is, however, no harm in not delivering to a woman, who for unchaste purposes, goes of her own authority, and resides with the family of her father, or other relation, what has been promised to her as her exclusive property.†

Authority. This is intimated by Kátyáyana himself:—“But a wife who does malicious acts injurious to her husband (e), who has no sense of shame (o), who destroys his effects (k), or who takes delight in being faithless to his bed, does not even deserve the stri-dhan (stri-dhanam na cha sórhati.”†

* Dá. bra. sang. pp. 44, 45.
† Vide Coleb. Dig. Vol. III. 585, and ante, pp. 47, 70, 89—106, and 384.
‡ Mr. Colebrooke renders the phrase “ stri-dhanam na cha sórhati,”—by “is held unworthy of the property above described;” but this does not appear to be accurate, the verbatim translation of the passage being ‘ na’—does not ‘cha’—even, ‘sórhati’—deserve stri-dhanam,—woman’s own property (in general, not the above described alone.)
Kinsmen, resuming the exclusive property of such a woman, may take it to themselves. The Vivāda-chintā-maṇi.—See Coleb. Dig. Vol. III. p. 585.

(e) "Acts injurious to her husband;"—the administering of poison or the like.—Coleb. Dig. Vol. III. p. 585.

(o) 'Who has no sense of shame;'-who goes to other towns on false pretences or the like.—Ibid.

(k) 'Who destroys his effects;'-who incurs expenses for immoral purposes.—Ibid.

Legal opinions delivered in, and admitted by the several Courts of Judicature, and examined and approved of by Sir W. Macnaghten.

Q. A fisherman's widow (there being at the time three sons of her contemporary wife living) made a gift of the whole of her self-acquired estate, consisting of a house and other property, to two Brahmīns, for the purpose of promoting her spiritual welfare: and having put the house into the possession of the donees, lived with them in it, and died while a son of her rival wife and his wife were residing in the same house. On her (the donor's) death, her step-son performed her eecual ceremonies, and then died. Now his (the step-son's) widow claims the house. Under these circumstances, is the gift good and valid?

R. Supposing the fisherman's widow to have acquired some wealth by her own personal exertions, and to have purchased the house with such acquisitions, and to have bestowed it on two Brahmīns for her own spiritual welfare, and to have delivered the gift to them before her death, in that case, her property over it became extinct, and, on the extinction of her right, the donees' title accrued. The donees' right cannot be lost, even though the donor's rival wife's son and his wife lived in that house. The extinction of their (the donees') property can be occasioned only by their non-acceptance of the gift, or by their disposing of it by sale or other alienation. According to the doctrine of the Dāya-bhāga and other legal authorities, the step-son's widow cannot have any claim to the property, for she has no right over it, and the law admits the validity of a sale and gift made by a woman of the donations of her affectionate kindred and of other peculiar property.
The text of Nārada and other legislators are quoted by the authors of the Dāya-bhāga and other works of law. "The wealth which is earned by mechanical arts, or which is received through affection from any other (than the kindred,) is always subject to her husband's dominion. The rest is pronounced to be the woman's property." "The independence of women who have received such gifts is recognised in regard to that property; for it was given by their kindred, to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated."

"In that which she has gained by the exercise of an art, such as painting or spinning, he is entitled to take it, even without the occurrence of any distress."

Dacca Court of Appeal.—Mac. H. L. Vol. II. Chap. VIII. Case. 33, pp. 239—241.

Q. 2. If a Hindoo, in the presence of his undivided brethren, made over to his wife his own share in the joint ancestral property, and the lands acquired by him in the mode described in the preceding question,* as her stri-dhan or peculiar property, will such lands after his death go to his widow as her stri-dhan, or will they devolve on his undivided brethren; and, if they go to the widow of the proprietor, has she or has she not a right to dispose of them by sale or gift; and if she has not a right to dispose of them by sale or gift, to whom will they belong after death? to her husband's heirs, or to whom? An answer to these questions is required to be delivered according to the law of Tirhoot.†

R. 2. If a Hindoo, as stated in the second question, in the presence of his undivided brethren, made over to his wife his own share in the joint ancestral property, and the lands acquired by him in the

---

* The mode described in the preceding question is: 'A Hindoo acquires landed property by means of his own funds, or by means other than those of the joint funds, at a time he is living in partnership with his brethren.—See Macn. H. L. Vol. II. p. 32.

† In respect of the disposition of the stri-dhan given by a husband, there is no difference of opinion between the Hindu law as current in Mithila and that as current in Bengal.
mode described in the preceding question, as her Stri-dhan or peculiar property, without any opposition or objection being made on the part of his brothers, from which their assent is inferable, then under such circumstances, after his death, the right to his property will be vested in his widow, and not in his undivided brethren. In which case, his widow is not at liberty to dispose of the lands in question by sale or gift, no more than she is entitled to dispose of other immovable property given to her by her husband, which forms, her Stri-dhan or peculiar property.

Authorities:—

1st. That which is received from affectionate kindred or earned by valour, or given to a woman by her relations with the consent of her husband, is a valid acquisition. Text of Viśhṇu-purāṇa, cited in the Vivāda-chintā-maṇi, Vivāda-ratnākara, and other authorities.

2nd. A person may dispose of his own acquisitions as he pleases. Text of Viśhṇu-purāṇa, cited in the Vivāda-chintā-maṇi Vivāda-ratnākara, and other authorities.

3rd. That which is received by a married woman or maiden, in the house of her husband or of her father, from her husband, or from her parents, is termed the gift of affectionate kindred. The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and sale, according to their pleasure, even in the case of immovables. Text of Kātyāyana, cited in the Vivāda-chintā-maṇi, Vivāda-ratnākara, and other authorities.

4th. The power of women having been declared generally over property given by affectionate kindred, an exception is here propounded in the case of immovable property given to her by her husband. Interpretation of the text in the Vivāda-ratnākara.

5th. What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immovable property. Text of Nārada cited in the Vivāda-chintā-maṇi, Vivāda-ratnākara, and other authorities.

Macn. H. L. Vol. II. Case 14, pp. 34—36.
Q. Should a woman of any of the four classes receive jewels as a nuptial donation (technically termed Youtaka) at the time of her marriage, do all such ornaments so received, belong exclusively to her, or have her husband’s mother and younger brother any legal right to share them with her?

R. A gift of ornaments or other effects to a woman of any one of the four classes at the time of her marriage, by a member of the family, either of her husband or her parents, or by a stranger, is by law termed Adhyagni sri-dhan, or in other words, the woman’s peculiar property, bestowed before the nuptial fire. It becomes her exclusive property, and the husband’s mother or other persons have no right to share it with her. The authorities for this doctrine will be found in the Dāya-bhāga, Dāya-tattwa, Vivāda-chintā-māni, Mitāk-shāra, and other works of law.

Kātyāyana:—“What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the woman’s peculiar property bestowed before the nuptial fire.”

Nārada:—“What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property.”

Manu and Vishnu:—“Such ornamental apparel as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves; they who divide them fall deep into sin.”

Kātyāyana again:—“Neither the husband, nor the son, nor the father nor the brothers, can assume the power over a woman’s property to take it or bestow it.”

City of Dacca, April 21st, of 1817.—Mc. H. L., Vol. II. Ch. III. Case 2, pp. 121, 122.

Q. A man, having two minor sons, assigned his property, movable and immovable, to his wife by a deed of gift, and now the two sons, being of full age and disposing mind, consent to the gift. Subsequently to the gift, the father contracted a second marriage, and the second wife brought forth a son, who claims the whole personal and real pro-
property of his father. In this case, is the gift which the father made previously to contracting a second marriage to be considered good and legal?

R. Property presented by a husband, while his two minor sons were living, to his wife, on his espousing a second wife, is denominated a woman's property, and the gift by the husband is complete and binding; but that alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control. The wife has no power to give or otherwise alienate the immovable property which she received from her husband; hence though such property be hers, it does not constitute a woman's peculiar property, because she has not independent power over it. Under these circumstances, the wife has a right only to enjoy her husband's gift of the real estate during her life. On the death of the senior wife, her issue alone are entitled to take the movable property which she received from her husband, because that was her peculiar property. The right of the husband endures over the immovable estate which he gave to his wife; and on the death of the husband, all his sons by either wife are entitled to inherit it.

"To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession; (this) or (what is) presented to her on her husband's marriage to another wife, (as also any other separate acquisition,) is denominated a woman's property."

"What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property."

"The wealth which is earned by mechanical arts, or which is received through affection from any other (than the kindred,) is (always) subject to her husband's dominion. The rest is pronounced to be the woman's property."

"When the mother is dead, let all the uterine brothers and uterine sisters equally divide the maternal estate."

The texts quoted are those of JÁGYAVALKYA, NÁRADA, KÁTYÁYANA, MANU, and VRISHASPAṬI.
The maternal grandfather of a person made a gift of some lands and houses to his grandson's wife, who possessed the gift for some time; and she, while suffering under the disease of which she died, made a gift of the same property to her daughter's son. Her son, having his uterine sister (the plaintiff,) another sister's son (the defendant,) and a brother of the half blood, give away the same property. In this case, which of the gifts is legal and binding?

R. The gift made by the woman, of the property which she received from her husband's maternal grandfather, is legal, because the property given is her peculiar property, which by law is termed *shoudāyaka* or gift from affectionate kinsred; and the gift by her son cannot be considered as valid and legal while she lives, because he has no right of proprietorship over it. This opinion is conformable to the *Dāya-bhāga*, *Dāya-tattwa*, *Vivāda-bhangārṇava*, and other authorities.

**Authorities:**

*Kāttavāna:* — "What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord or her parents, is called the gift from affectionate kindred; and such a gift, having by them been presented through kindness, that the women possessing it may live well, is declared by law to be their absolute property. The absolute exclusive dominion of women over such a gift is perpetually celebrated; and they have power to sell or give it away, as they please, even though it consist of lands and houses."

*Kāttavāna:* — "Neither the husband, nor the son, nor the father, nor the brothers, have power to use or to alienate the legal property of a woman."


Q. There were two brothers of the whole blood, who had some ancestral rent-free lands. The elder had an only daughter, but no son, and the younger had two sons. The elder disposed of his daughter in marriage, and either gave a part of the landed estate for his daughter's maintenance, or the daughter, on the death of her father, acquired it by right of succession. The mode of its coming into her poss-
session does not clearly appear. Under these circumstances, is she competent to make a gift of such property to a stranger, without the consent of her paternal uncle's sons?

R. If one of the brothers, having contracted his only daughter in marriage, give a certain quantity of land out of his ancestral landed estate for her support, and the daughter took possession by right of such donation, in this case, she is competent to give it away to a stranger without the sanction of her father's brother's two sons, as that property is termed the gift of affectionate kindred over which her independency is recognized. If, on the other hand, the property became hers by succession, she had no power to give it without her father's nephew's consent. This is consonant to the authorities prevalent in Bengal.

Authorities:—The texts of Kātyāyana, laid down in the Dāya-bhāga, Dāya-krama-sangraha, and other tracts:—"That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such gifts is recognized in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated both in respect of donation and of sale, according to their pleasure, even in the case of immovables." The following is a passage of the Dāya-bhāga: "Let her enjoy with moderation the property until her death. After her, let the heirs take it."

"The word 'wife' is employed with a general import: and it implies that the rule must be understood as applicable generally to the case of a woman's succession by inheritance."


Rām-dulāl Sarkār and another versus Sri-mati Joy-maṇi Debi.

Cases bearing on the vyavasthās Nos. 430, 431 & 432.

This was an issue to try whether a certain paper writing, addressed to the plaintiffs, was the will of Rādhā-kānt Chatterjea. In the course of the trial a witness of the
name of Ishán-chander was called, on the part of the plaintiffs to support the will; against whom it was objected that he was interested, because maintenance was devised to his wife by the will, and the husband was by law entitled to receive it.

Whereupon this question was put by the Court to the Pandits:—

Q. If a legacy be given to a married woman, has her husband any interest in it?

A. If the legacy be given to her by the relations of her husband, or by her own relations, it is Strí-dhas, and the husband has no right to it; but if given to her by a stranger, she cannot part with her interest in it without her husband’s consent.

It was next objected that he himself took an interest under the will as having the custody and care of certain real property for his son till he came of age.

But the Court overruled the objection, the party taking no beneficial interest, but only as a bare trustee; and they would have admitted the witness, but on another objection, a doubt occurring whether he might not have an interest in a possible event in the equity suit, out of which this issue was directed; the witness was withdrawn.

East’s Notes, No. XLV. Sittings after first term, 1816.—See Morley’s Digest, Vol. II. p. 65.

G. versus K.

Case hearing on the vyavasthas No. 429—436.

“K, a Hindu, the defendant in this case, married G, the lessor of the plaintiff, a Hindu woman of the same caste, according to ceremonies used by others of that caste, and had many sons and daughters by her. All the sons died long before the year 1193 B. S., but some of the daughters are living. In 1193, K, for the purpose of having male issue, married J, with whom he received no marriage portion, but a small present from her father of clothes, ornaments, and furniture. Before this last marriage, G, quarreling with her husband on that subject, threatened to destroy herself, or quit his house and live elsewhere, if he married any other woman. In order to pacify her, K signed a paper, whereby he gave her, amongst other things, three dwelling houses and a half, and
a garden, without saying whether for life or for ever. One of those houses descended to K from his father; and the rest were purchased by himself. Besides the houses so conveyed, K was in possession of two other houses, consecrated to śiva, from which he received rents, and out of those rents provided things necessary for the idol.

J has had no child, but G has borne children to the defendant K since the execution of the aforesaid paper, and one child since process was commenced by her against her husband. K did not deliver possession, according to the writings, either of the premises in question or of the other things conveyed thereby, but G continued to live in one of the houses, as she had done for many years before; and she now brought this action against her husband to obtain possession of the said three houses and a half.

The following questions were put to the Pāndits.—

1st. Does a gift made by a husband to a wife, in such a manner, and on such an occasion, as stated above, give the wife a right to sue her husband for the property given?

2nd. Is such a gift to be understood as a gift for life only, or has the wife a right to possess the houses in her life-time, or to devise them at her death?

The Pāndit Goeer-dhun Kowl Sherma gave the following answers.

The answer to the 1st. Q. Whatever property a man who has married two wives has given to the first wife, by means of a paper witnessed, in order to satisfy her in all respects, such property is the property of the wife. In order to recover such property the wife may sue the husband, according to what the Śāstra directs, in like manner as for a debt.

And he quoted as authorities for this opinion Jānyavalkya, who says, as recorded in the Dhyā-bhāga—"That which father, mother, or husband, has given, is called "given near the fire," and it is also called "the property of females." On the same subject Kātyāyana has spoken thus:—"Neither a husband, nor yet a son, nor a father, nor brothers, have a right to appropriate stri-dhan, i. e. the property of females; and if any one of these shall possess himself of such property by force, he must be made to return it with interest, and must
be well chastised.' In the Dēya-tattva, where it treats of the property of females, such property is termed svadhyika stri-dhan. That which is obtained from a husband or from parents, I reckon to be svadhyika, i.e. given for a good purpose, and when a woman obtains svadhyika stri-dhan, it implies that she has the power of disposing of it.

Answer to the 2nd. Q. The property of females, given as stated in the second question, is theirs as long as they live. A woman has power over this kind of property to sell it: * and if it be not immovable property, she has also the power of disposing of it at her death; and whatever immovable property so remains after her death will descend to the lawful heirs in succession, that is to say, to her children, husband, father, mother, &c.

And the following were quoted by the Pandit as authorities on this subject. Kātyāyana says: 'Whatever property the husband has given to the wife, let her keep it, in his absence,† in any manner she pleases. If he be present,‡ let her take care of it; if not, let her deliver it to some of his relations. Let the wife dispose of the property given to her by her husband in any manner she pleases when the husband dies, but while he is alive let her keep it.' On this point Nārada has spoken, as quoted in the Dēya-bhāga, as follows: 'Whatever the husband, of his own pleasure, has given to the wife, let the wife, when he dies, expend or give away as she pleases, excepting only the immovable property. On this, also Devāka has spoken thus:—'The property of the wife is to be divided equally, after her death, to (her) sons and daughters. But if she be without children, let her husband take it, or else her mother, or her brother, or even her father.'

To the same questions the Pandit Rāma-chārm Sherma, answered as follows:—

Answer to the 1st. Q. It does. On this I here write the particulars. Whatever property the man, who has married two wives, has given to the first wife, that property is stri-dhan: neither husband, fa-

* Excepting, however, the immovable portion thereof.
† In his absence—that is, on his death.
‡ If he be present—that is, if he be living.

See the following authorities, and ante, pp. 685, 686, 688&689.
ther, son, nor brothers, have any power to seize such property, or to
give it away in charity. If any of these persons shall possess himself
of this property by force, the magistrate shall cause him to restore it
with interest, and shall chastise him on a complaint being made. The
great and learned Jímáta-váhna and others have determined this ac-
gording to the Shástra.

To the 2nd. Q. As long as she lives, the wife has a right to sell the
stri-dhan given to her by her husband, unless it be immovable property,
and at her death she may also devise it, if it be not what is termed
immovable property. A woman can only have the use and occupation
of immovable property; and afterwards it will descend to the heirs of
stri-dhan, or female property.

East’s Notes, No. CXXIX. 1794.—Morley’s Digest, Vol. II.,
pp. 234—237.

Gosseen-chand Kobraj, son of Beid-nath Kobraj, Appellant,
versus Must. Kishen-munee and Musst. Joy-
maní. Respondents.

Case

The plaint was to the following effect:—Munohur
Kobraj held possession of his estate to the day of
his death, in which he was succeeded by his son
Oode-narain Kobraj, the grandfather of the plaintiffs. Oode-narain
had two sons, viz. Gunga-narain Kobraj, father of the plaintiff Kishen-
maní and Deb-narain Kobraj, father of the other plaintiff Joy-maní.
Gunga-narain Kobraj died in 1196 B. E. leaving his daughter Kishen-
maní. The other brother Deb-narain then held joint possession with
Kishen-maní to the time of his death, which occurred in 1214 B. E.
Deb-narain was succeeded by his son Bhyrub Kobraj, who continued
to hold joint possession with Kishen-maní. Bhyrub died in 1215, but,
the day before his death, made a verbal gift of the whole of the pro-
erty to the plaintiffs (with the exception of 20 bheeghas of land which
he gave to his gooroo or spiritual guide) to be held by them in equal
portions. The plaintiffs now sue to recover the property.

The defendant Beid-nath Kobraj resisted the claim. He alleged
that, after the death of the son and grandson of Munohur Kobraj, the
property came in sole possession of Bhyrub,—the name of Munohur
Kobraj continuing without change on record in the collector’s books.
Bhyrub died childless, and the defendant, who is Munohur’s daughter’s son, became entitled to the property under the Hindoo law of inheritance. Kishen-maṇi, being barren, and Joy-maṇi, a childless widow could not succeed to ancestral property.

The case was first brought before Mr. H. Shakespear, who put the following questions to the paṇdit of the Court.

1st. Is the verbal gift by Bhyrub Kobraj, who was at the time eighteen years and a half old, made one day before his death, and being at the time in possession of his senses, valid or not?

2nd. In the event of such gift being illegal, who are entitled, and in what shares, to the estate of Bhyrub?

3rd. Let it be admitted that Kishen-maṇi was entitled to her father’s property, under the probability at the time of his death of her thereafter having a son; Kishen-maṇi and her husband have both died since the present suit commenced, was it competent to Kishen-maṇi to transfer by gift to Musst. Joy-maṇi, her cousin, the property inherited by her from her father?

If it was not competent to her to do so, who are the heirs of Musst. Kishen-maṇi?

To the above questions, the Paṇdit replied: The gift by Bhyrub, under the circumstances stated, was valid.

The authorities are:—

The Vivādāraṇava-setu, Vivāda-bhangāraṇava, and other tracts:—

“What has been given under the agitations of fear, anger, lust, grief, or sickness, must be considered as ungiven.”

“To the third question, the reply is that, if Kishen-maṇi, because of the probability of her giving birth to a son, inherited her father’s property, it was competent to her to make a transfer of such property to another, with the view of her paying her father’s debts, or for any other necessary purpose, but not otherwise. If, however, the property, as appears from some of the papers of the Zillah record of this case, was acquired by Kishen-maṇi as a gift from Bhyrub Kobraj, it is her soudāyika or gift from affectionate kindred; it is thus her stri-dhan or peculiar property, and she was competent to alienate it.
Supposing then that the property came to Kishen-maçi by inheritance, and that at the time of her death Beid-nath Kobraj, the original defendant, was alive, he, as the son of the daughter of Munohor Kobraj, the paternal great grandfather of Kishen-maçi, was entitled to succeed her; and in that case Gosaeen-chand Kobraj, the son of Beid-nath, is entitled to it; but if Beid-nath died before Kishen-maçi, his son, the present appellant, has no right to the property inherited by Kishen-maçi, because the son of a daughter's son has no right to his great-grandfather's property. Jyu-maçi has no right of succession to the property inherited by Kishen-maçi, on the death of the latter, because the property so inherited by Kishen-maçi from her father cannot go to her father's brother's daughter. The property inherited by Kishen-maçi, supposing any to be in existence, will on her death go to the heirs of her father Gunga-narain, in the order stated in the Sháster.—The authorities are Manu, the Dáya-bhága, Dáya-tattwa, Dáya-krama-sangraha, Nárada-smriti, Dáya-rahasya, Viváda-bhángára, Suddhi-tattva and other tracts.

1st. Kátýávana cited in the Dáya-bhága:—'If a man die without son, grandson, or great-grandson, his wife shall succeed to his property. The wife should during her life-time live in her husband's house, and make no waste or unnecessary expenditure of the estate. After her death, the property will go to her husband's heirs.'

2nd. Dáya-bhága:—'The word 'wife' in the above text is illustrative, used to shew the law as applicable generally to all women who acquire property by inheritance.'

3rd. Nárada-smriti:—The sale, gift, or pledge of houses and land acquired by women by inheritance, without some special necessity intervening is illegal.

4th. Yájnya-valkya (Jágonvalya) cited in the Viváda-bhángára and others: 'Whoever inherits the property of another, must pay the debts of him from whom he inherits.

5th. Kátýávana as cited in the Dáya-bhága:—'Whatever a woman, either before or after her marriage, in the house of her husband or her father, receives from her lord or her parents, is termed the gift of affectionate kindred.'
6th. Kātyāyana cited in the Dāya-bhāga:—'A woman may sell, give, or pledge her soudāyika stri-dhan, even though consisting of immovable property.'

7th. Dāya-bhāga:—'The right of succession of the offspring of the grandfather and of the great-grandfather, including the daughter's son, must be understood with reference to the order of proximity observed in offering the funeral cake.'

8th. Dāya-bhāga:—'A daughter's son is the giver of funeral oblations, the son of a daughter's son is not the giver of funeral oblations.'

9th. Boudhāyana cited in the Dāya-bhāga:—'Men who are born blind, &c., and women, cannot inherit.' If any one ask how is it that, if women do not inherit, a wife, daughter, mother, and grandmother, and some other women, are allowed to inherit? the answer is, because there are special exceptions in the Shasters in their favor.

On the receipt of the above reply, Mr. Shakespear put a further question to the paṇḍit with reference to the doubt which appeared from the petition of plaint, as to whether Kishen-maṇī sued for her share of the property in right of succession to her father Gunga-narain, or under the gift made to her by her cousin Bhurub Kobraj.

"Supposing a woman to sue for property in right of inheritance and also on the ground of a deed of gift, and obtain a decree generally without specification of the particular ground on which her claim was recognized, and then make a gift of her property to another, is such gift valid or not?"

The paṇḍit replied, that such a gift was valid, because by such a recognition the previous gift to herself was not invalidated; and such gift was the creation of her absolute right, she was competent to give it away.

At this stage of the proceedings Joy-maṇī also died, and Nursing Deb appeared as her heir and successor. On this another reference was made to the paṇḍit, to ascertain who was entitled to succeed Musst. Joy-maṇī,—the appellant Gosamun-chunder Kobraj, who is the son of the daughter's son of Munohor Kobraj, the common ancestor of both parties, or Nursing Deb, who alleges himself to be the son of a contemporaneous wife of the husband of Musst. Joy-maṇī, that is, her step-son.
The pandit replied that her step-son would succeed to the stri-dhan of Joy-mani. Authorities:—Manu, Dāya-bhāga, and other tracts current in Bengal.

Dāya-krama-sangraha:—"In default of heirs so far as the son of a daughter, the son of a contemporary wife will inherit the stri-dhan of the step-mother."*

Mr. Shakespear having left the Court, the case was heard by Mr. Halhed, who pronounced judgment as follows:—"It appears from the bewastha of the pandit, that the gift of Bhurub to Kishen-mani, and Joy-mani was valid; the property thus transferred to them by the gift became their stri-dhan, and they have full power to alienate it. Kishen-mani is proved to have given her share of the property to Joy-mani, to whom succeeds Nursing Deb, the respondent. The decrees of the lower Courts must therefore be confirmed."†—8th of July, 1836.—S. D. A. R. Vol. VI. pp. 77—81.

The Marginal notes to the above decision are as follows:—

A verbal gift by a Hindoo, eighteen and a half years of age, made the day before his death, he being at the time in full possession of his senses, is valid.

Under the Hindoo law a gift of property to a woman by her relation is her Soudāyika or gift from affectionate kindred. In the present case a gift by a Hindoo to his sister and paternal uncle's daughter was held to be at their entire disposal, as their soudāyika stri-dhan or peculiar property by gift from affectionate kindred.

* The above text as cited by the Puṇḍita relates to stri-dhan left by a married woman not given to her by her father, and not given to her at the time of her nuptials; but the Puṇḍita might have extended the list beyond the daughter's son to the great grandson in the male line. The order of succession is, that the son and unmarried daughter succeed together; on failure of them, the daughters who have, or may have, male issue; and afterwards the son's son, the daughter's son, the great grandson in the male line, the son of the contemporary wife.—See Colebrooke's translation of Dāya-bhāga, page 100.

† The Court evidently proceeded upon the ground urged by the defendant in the Zillah Court that the estate of Munohur Kobraj descended entire to Bhurub Kobraj his great grandson. On this ground the property became the peculium of Kishen-moni and Joy-moni, when given to them by Bhurub. Had it been held, on the other hand, that Kishen-moni inherited any portion of the property, she could not have given it to Joy-moni, but it must have gone to her father's heirs in succession, agreeably to the Shāstrīs.
Where the claimants to a woman’s stri-dhan as above are the son of the daughter’s son of her paternal great-grandfather, and the son of a contemporary wife, the latter will inherit under the Hindoo law.

Under the Hindoo law, in the case of a woman dying possessed of ancestral property, the daughter’s son of her paternal great-grandfather, from whom the property descended to her, will succeed, in default of other heirs. But in the event of the woman having outlived such daughter’s son, the son of the latter will not inherit.

The daughter of a paternal uncle will not inherit the property, left by a woman, which she had inherited from her father. But such property will go to her father’s heirs, should any such be in existence, in succession, according to the law of inheritance.

ORDER OF SUCCESSION TO THE STRI-DHAN OF DIFFERENT DESCRIPTIONS OF WOMEN.

SUCCESSION TO THE STRI-DHAN OF A MAIDEN DAUGHTER.

To the property of a maiden daughter,—

Vyavastha: 439. First, the uterine brother is the successor; in his default, the mother, and failing her, the father.*

Authority. “The wealth of a deceased damsel let the uterine brethren themselves take; on failure of them it shall belong to the mother; or if she be dead, to the father.”†

Vyavastha: 440. Failing them, her parents’ relations, as they may happen to be, succeed according to the order (hereafter shown.)

This, however, relates to wealth other than that which has been given to the damsel by a bridegroom.§

---

† This text is cited in the Daśa-śāstra as of Boudhāyana, and in the Daśa-krama-sangraha as of Nārada.
‡ See the table at the end of this chapter. See Macn. H. L. Vol. I. p. 38.
Vyavastha. 441. A bridegroom has a right to the wealth given by himself.

Authority. I. "The bridegroom shall take the gratuity given by himself."* — Poithâfîna.

II. "Let the first bridegroom on his return take back the presents he gave to the damsel, who has since been married; and in case of her death likewise, let him receive back what he gave, after defraying the expenses which they have mutually incurred."* — Nârâda.

ORDER OF SUCCESSION TO THE DIFFERENT KINDS OF THE STRI-DHAN OF A MARRIED WOMAN.

Succession to a woman’s joutaka† property.

To a woman’s joutaka† property, or that received at her nuptials:—

Vyavastha. 442. Her maiden daughter succeeds first.‡

Authority. Property given to the mother on her marriage (joutaka) is the share of her unmarried daughter.‡—Manu. Chapter, IX, verse 131.

Vyavastha. 443. In default of a maiden daughter, the daughter who has been affianced succeeds.‡

Authority. I. "A woman’s property goes to her daughters unaffianced, and to those not actually married" (a);‡

Goutama.

(a) As, by the word ‘daughters’ the right of succession by all the daughters is generally declared, the mention of ‘unaffianced’ &c. becomes significant, as denoting the order in which they respectively inherit, and therefore first the maiden daughter succeeds; then the affianced daughter, that is, one whose troth is plighted; in her default

---

† Joutaka or joutaka signifies property received at marriage: the word ‘yuta or juta,’ derived from the verb ‘Yu’ or ‘Ju’ to mix, imports ‘mingling,’ and mingling is the union of man and woman as one person; and that is accomplished by marriage. For a passage of scripture expresses: "Her bones become identified with his bones, flesh with flesh, skin with skin." Therefore what has been received at the time of marriage, is denominated Joutaka or joutaka. See Daś. bha. p. 82. See ante. p. 681.
the married daughter described as above; and failing her, the succession devolves equally on the barren and widowed daughters. This is the meaning of the text.—Sri-krishña. Dá. kra. sang. p. 46.

II. A woman’s separate property received at her nuptials, goes to her daughter; and not to her sons (if there be a daughter,) and the text of Goutama is intended to explain the order of succession in this case (of an inheritance devolving on the female issue.) First, the woman’s property goes to her unaffianced daughters. If there be none such, it devolves on those who are betrothed. In their default it passes to the married daughters. For the right of the female issue generally is suggested by the term ‘daughters’ (in Goutama’s text;) and the special mention of ‘unaffianced’ and ‘unmarried,’ which follows, is pertinent as declaratory of the order of succession.—Dá. bhá. pp. 85, 86.

Vyavastha. 444. Failing the damsé affianced, the married daughters who have, and who are likely to have, male issue, succeed together.

Authority. 1. Let the females share the nuptial presents (páriṣājya) of their mother.—Vāshīṣṭha. Coleb. Dá. bhá. p. 83.

II. In certain forms of marriage termed brāhma, &c., what has been received by a woman at the nuptial fire, goes after her death, first to her daughters. Again, the right devolves first on the maiden daughter; if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter (including even a barren or widowed one;) or on failure of all daughters, it devolves on the son.—Dá. bhá. p. 86.


† The order of succession is this: first the property goes to the maiden daughter: then to one betrothed; for she is superior to the married daughter, because she belongs to the same original family (gotra) with her parents. On failure of such, the property devolves on the married daughter, that is, one who has a son, or who may be expected to have offspring. If there be none such, it goes to any other daughter.—Sri-krishña and Achyuta.—Dá. bhá. p. 85, Note.
Vyavastha. 445. On failure of either of the daughters who have, or are likely to have, male issue, the other takes the succession.*

Authority. I. The above text of Goutama, and the above explanation thereof by Sri-krishna.

II. The above passages of the Dāya-bhāga.

Vyavastha. 446. If there be none of either of the above descriptions of daughters, the barren and widowed daughters have an equal right.†

Authority. The right of the barren and widowed daughters to succeed, notwithstanding they confer no direct benefits through the medium of sons, is gathered from the text of Goutama above quoted, which declares the right of succession by the daughters generally, whether married or unmarried.—Dā. kra. sang. p. 47.

Vyavastha. 447. On failure of either of them, the other succeeds.‡

Reason. By the term 'daughters' the right of all the daughters, being generally declared, and it being said that on failure of all daughters the succession devolves on the son, the son and the rest are not entitled while any of the daughters, from the maiden to the widowed, exists.

Vyavastha. 448. Here, however, on the death of a maiden daughter, or of one affianced, in whom the succession had vested and who having been subsequently married is ascertained to have been barren, or on the death of a widow who has not given birth to a son, the succession to the property which had passed from the mother to her daughters, would devolve next on the sisters, having, and likely to have, male issue, and in their default, on the barren and widowed daughters;—

* Coleb. Dā. bhā. p. 100.


‡ Coleb. Dā. bhā. p. 100.
not on the husband of such daughter as above mentioned in whom the succession had vested.—*Dā. kra. sang.* pp. 46, 47.

**Reason.** For the right of the husband is relative to the woman’s separate property; and wealth which has in this way passed from one to another, (being ancestral property descended by inheritance†) can no longer be considered as the woman’s separate property: this must be understood.—*Ibid.* p. 47.

**Vyavastha.** 449. On the failure of all daughters, the son has a right to succeed.‡

**Authority.**

I. “Male issue of the body being left, the property must go to them.”*—BOUDHĀYANA.*

II. “Let daughters divide their mother’s wealth; or, on failure of daughters, her male issue.”†—NĀRADA.

III. “But, on failure of daughters, the inheritance belongs to the son.”*—KĀTYĀYANA.*

IV. “Daughters (i) share the residue of their mother’s property,* after payment of her debts; and the male issue succeeds in their default.”*—JĀGNUVALKYA.

(i) The word ‘daughter,’ in the text of YĀJNYAVALKYA, having the termination of the first or nominative case, and the pronoun (‘their’) having that of the fifth or ablative, cannot be connected with the term “issue,” by construction, which requires the sixth or relative case. But this term governs the word ‘mother’ notwithstanding the intervention of mediate terms. Thus then, with the certainty, that

---

* See Elb. In. p. 85.
‡ This much appears to have been omitted in the translation by Mr. Winch.
† Dā. bha. pp. 82, 85, 86, 100;—Dā. kra. sang. p. 6, 48.

The cause of daughters being preferred to sons, and daughters’ sons to son’s sons, in the succession of the sīrī-dhāras received at nuptials, appears to be that a male child is procreated, if the seed predominate, but a female, if the woman contribute most to the fœtas. Thus *Manu* :—“But a boy is in truth produced by the greater quantity of male strength, a girl by a greater quantity of female; by equality an hermaphroditic, or a boy and a girl; by weakness or deficiency, is occasioned a failure of conception.” Ch. III. r. 49.
'issue of the mother' is here intended, it is reasonable to interpret issue of the mother [as signifying son] in the texts of Náráda and Kátáváyána: for there can be no contradiction [since the passages, must be presumed to be grounded on the same revelation.] Moreover, conformably with the text of Boudháyána, "Male issue of the body being left, the property must go to them;" and because [the son, as immediate issue of the mother, is,] nearer of kin [than the daughter's son, who is a mediate descendant;) it is reasonable, that the son born of her body should have the right of succession to his mother's property, and not the daughter's son, who is a mediate descendant not born of her person.—Dá. bhá. pp. 84, 85.

Conclusion. Thus by the term 'male issue,' in the above text of Jángyavalkya, the right of the son to succeed on failure of daughters is declared.—See Dáya-krama-sangraha. p. 47.

Vyavastha. 450. In default of the son, the daughter's son inherits.*

For it is reasonable that, since the daughter's claim is preferred to that of the son, the son of the debared son should be excluded by the son of the person who bars his claim.—Dá. kra. sang. p. 48.

Vyavastha. 451. Failing the daughter's son the son's son succeeds, and in his default the great-grandson in the male line.*

According to the degree in which benefits are conferred by them. Dá. kra. sang. p. 48.

Vyavastha. 452. In default of the great-grandson in the male line, the son of a rival wife succeeds.*

"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 declared similar to mothers. If they leave no issue of their bodies, nor son, nor daughter's son, nor son of those persons, the sister's son and the rest shall take their property." The term

‘son’ in this text of VRASAPATI is intended to propound the right of succession by the son of a rival wife; otherwise, it is useless to consider it as a discriminative of ‘Ourasas,’ meaning of itself ‘legitimate issue,’ and it would also follow that the younger brother of the woman’s husband and the rest would have a right to succeed, notwithstanding the existence of the son of a rival wife.—See Dā. kra. sang. pp. 48, 49.

In expounding the text of VRASAPATI, above cited, Jimita-vāhana says: ‘Both son and daughter are here signified by the term ‘issue of the body.’ For they bar every other claimant. By ‘son’ is meant the child of a rival wife. For a passage of law expresses, ‘If among all the wives of the same husband, one bring forth a male child, MANU has declared them all, by means of that son, to be mothers of male issue.’ Nor is the term ‘son’ an epithet of ‘issue of the body’ for it would be superfluous; and the sister’s son and other remote heir would have the right of succession, though a son of a contemporary wife be living. If there be no legitimate son or daughter, nor a son of a rival wife, the right of succession devolves on the daughter’s son:” (Coleb. Dā. bhā. p. 96.) And thus he holds that the son of a rival wife is entitled in preference to the daughter’s son. Sri-

* In Colebrooke’s translation of the Dīya-bhāga the words ‘nor a grandson in the male line’ are inserted between the words ‘daughter’ and ‘the son of a rival wife.’ But I do not find such reading in any of the editions of the original. The reading to be found in the printed copies of the Dīya-bhāga in the Sanskrit, is “If there be no legitimate son and daughter of the body, nor a son of a rival wife.” Maheshwara has rejected the words ‘nor a grandson’ as unnecessary, and improperly introduced; and Raghunandana has altogether omitted them. Mr. Colebrooke, after citing Maheshwara and Raghunandana, seems by his silence to have approved of the reading adopted by them. The words in question have not therefore been inserted here, being as they are quite unnecessary, and because the only result of their insertion would be that the daughter’s son would be entitled to succeed after the legitimate son and daughter of the body, the son’s son, and the son of a rival wife; but such order of succession is not also respected for reasons already stated.

† This passage is censured by Sri-Arishṇa, who shows, by very satisfactory reasoning, that the daughter’s son ought to inherit before the son of a contemporary wife. Achyuta considers the reading of the text to be questionable; and Maheshwara pronounces it to be spurious; he also rejects the words “nor a grandson” as unnecessary and improperly introduced in this place. Raghunandana in the Dīya-tattva copying Jimita-vāhana’s argument, omits this passage altogether; and the author of the Vramitrodaya has substituted one of quite different import.—Coleb. Dā. bhā. pp. 94.
* krishna Tarkālakāra, however, has laid down that the son of a rival wife is entitled to inherit after a daughter's son, son's son, and son's grandson in the male line* Raghu-nandana, Jaga-nātha Tarka-panchānana and the rest, have also done the same; and the doctrine laid down by these is most prevalent as well as consistent; for Manu says: "Between a son's son and the son of a daughter there is no difference in law; since their father and mother both sprung from the body of the same man," and accordingly a daughter's son is by reason of consanguinity preferable to the son of a rival wife.

* The son of a rival wife* includes also the sister of such son: for the gender is here employed indefinitely; and by means of her offspring, she becomes the giver of funeral oblations, to the husband of the woman and his ancestors to the third degree.—Sri-krishna†

* The term 'son' includes also adopted sons.—Achuta, &c.†

Vyavastha. 453. In default of the son of a rival wife, her grandson succeeds; and failing him, her great-grandson.‡

**Reason.** Since they both present oblations to her husband in which she also participates.‡

**Reason.** By the pronoun in the phrase "son of those persons" the woman's own issue and the child of a rival wife are signified.—Therefore, their sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the obligation of food at obsequies.—Coleb. Da. bhā. p. 97.

The order of succession in default of heirs, as far as the great-grandson in the male line of the rival wife, will be found in the succession to a childless woman's separate property, q. v.

---


† Coleb. Da. bhā. p. 96.

VYAVASTHA-DARPANA. 715

SUCCESSION OF A WOMAN’S CHILDREN TO HER AJOU-TAKA’S PROPERTY.

To a woman’s separate property not received at her nuptials,*—

Vyavastha. 454. First, the maiden daughter and son succeed together.†

Authority. I. All uterine brothers are entitled to the wealth equally; and so are unmarried sisters.—Shankha and Likhita.—Coleb. Dā. bhā. p. 79.

II. “A woman’s property is common to her sons and unmarried daughters when she is dead; but if she leave no issue, her husband shall take it, her mother, her brother, or her father.”—In the first half of this text of Dhvāla the words “sons and unmarried daughters” being exhibited in the conjunctive compound (called) ‘Dwandvā,’ and because the words “common to” are here expressed, it results that the son and the unmarried daughter possess the right of inheritance together.—Dā. kra. sang. p. 54.

Here it is expressly declared that the mother’s goods are common to the son and unmarried daughter: and if the maiden daughter were exclusively entitled to the whole of her mother’s estate, the especial texts of Manu and others, concerning the wealth given at the nuptials, would be unmeaning; since she would have the right in all cases indiscriminately.—Coleb. Dā. bhā. p. 79.

Vyavastha. 455. In default of either of them, the other succeeds.†

Vyavastha. 456. In default of both these, the married daughter who has, and the married daughter who is likely to have, male issue, equally succeed.†

Reason. Because the following text of Nārada declares:—

“In default of a son, let a daughter take the succession, for they are both offspring alike;” and because oblations at

* ‘Joukaka’—property received at nuptials: ‘A-joukaka’—property not received at nuptials. See ante, p. 708.
the pārvana* srāddha are presented by the daughter through the medium of her son, to the husband of the woman, in which she participates.—Dā. kra. sang. p. 55.

Vyavastha. 457. In default of either of them, the other succeeds.†

Vyavastha. 458. On failure of both of them, the son’s son succeeds.†

Reason. For he presents in the pārvana* srāddha an oblation to the husband of the woman, of which she participates.—Dā. kra. sang. p. 55.

Vyavastha. 459. In default of the son’s son, the daughter’s son succeeds.†

Reason. Because it is reasonable, since the married daughter is debarred from the inheritance by the son, that the son of the debarred daughter shall be excluded by the son of the person who bars her claim (Coleb. Dā. bhā. p. 81;) and because, from the expression ‘like the son’ in the following text of Manu, “A daughter’s son delivers him in the next world like the son of a son,” it results that, when there is no longer an adverse claim, the daughter’s son has a right to succeed after the son’s son (See Dā. kra. sang. pp. 55, 56;) also because in the above text the daughter’s son being considered somewhat inferior to a son’s son, it is proper that the latter be preferred to the former or the former inherit next after the latter.

Vyavastha. 460. In default of the daughter’s son, the great-grandson in the male line succeeds.†

461. Failing him, the son of a rival wife, her grandson and great-grandson in the male line, succeed successively.†

Reason. Since all these present funeral oblations to the husband of the woman, in which she participates.—W. Dā. kra. sang. p. 56.

* See Annt, p. 39. Note.
Vyavastha. 462. Next to these, the barren and widowed daughters inherit together.*

Authority. For they too rank among the progeny of the woman, and the right of the husband and the rest to inherit is only in the case of a failure of progeny generally.—See Coleb. Dá. bhá. p. 81. Dá. kra. sang. p. 56.

Vyavastha. 463. Failing either of these, the other succeeds.*

According to Jímúta-váhana the barren and the widowed daughter succeed in default of heirs as far as the daughter’s son (See Coleb. Dá. bhá. p. 81 ; ) but according to Srí-kriśna Turkáulkára, the great-grandson in the male line succeeds in default of the daughter’s son, after him succeed the son, grandson, and great-grandson, in the male line of the rival wife, then the barren and (childless) widowed daughters are entitled to inherit. (See Dá. kra. sang. p. 56 & Coleb. Dá bhá. p. 100.)—The doctrine of Srí-kriśna is prevalent, and respected in preference to that of Jímúta-váhana.

Succession to a Woman’s separate property given by her Father.

To the property given to a woman by her father at any time other than that of the wedding,—

Vyavastha. 464. A maiden daughter succeeds in the first instance.†

Authority. “The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmání damsel (kanyá) take, or let it belong to her offspring.”—Manu.

Here by the specification of “given by the father,” it is intended that whatever has been given by the father even at any time other than that of the wedding, belongs first to the damsel, and after her it goes to her offspring,—her son. The expression ‘bráhmání’ damsel is merely an illustrative recitation (anu-váda.) Thus it is stated in the Dóya-bhága (See p. 83.)—Dá. kra. sang. p. 58.

Vyavastha. 465. Next a son succeeds.*

" 466. Then a daughter who has, and one who is likely to have, male issue, succeed together.*

" 467. After them the daughter’s son, then the son’s son, after him the great-grandson in the male line.*

" 468. Then the son of a rival wife, and her grandson, and great-grandson in the male line, succeed one after another.*

Vyavastha. 469. Next to these, the barren and widowed daughters inherit together.*

Afterwards the succession proceeds as in the case of property received at nuptials denominated Brāhma &c.* (See ante, p. 708.)

Remark:—The above order of succession is according to Sūrī-krishna’s commentary on the Dāya-bhāga as translated by Mr. Colebrooke, and adopted by Sir William Macnaghten and the rest. As it relates to the property given by a father at any other time but the wedding, it must be inferred that the property given by a father at the time of his daughter’s wedding is included in the Joutaka (ante, 708) property in general (the above also being given at the time of marriage,) and that the succession thereto is regulated by the same rules as are laid down for the latter.—Sūrī-krishna in his Dāya-krama-sangraha, however, without making the above distinction, lays down that succession to the property given by a father to his daughter, whether at the time of her marriage or at any other time, is regulated according to the principles applicable to the property received at nuptials. His principles to the above effect are as follows:—“In regard to the wealth given by the father to a woman at the time of the wedding, or antecedent or subsequent to it, a maiden daughter inherits in the first place, after her, a married daughter, who has or is likely to have male issue, inherits together. Next, the succession devolves on the barren and widowed daughters, and in default of all daughters, the son and the rest succeed, as in the case of property received at nuptials. Dāy. kra. sang. pp. 57, 58. The above is not the solitary opinion of Sūrī-krishna alone, but also of Jīmūta-vāhana

(as is evident from the following note)* as well as of all the other commentators of the Dāya-bhāga.† Thus as far as the preponderance of authority is concerned, it is on the side of Śrī-krishna who himself is the greatest of the Bengal Authorities and whose opinion as laid down in his Dāya-krama-samgraha, is held preferable to all other books wherever they differ.‡ But the order of succession as given in the commentary on the Dāya-bhāga seems to be more consistent with reason, for, in the succession to this kind of Śrī-dāhan, why should the son, who confers the greatest benefit on the mother, be postponed even to the widowed and barren daughters (who confer no spiritual benefit on her) in the same manner as in the succession to the Jousaka property which descends to the daughters in preference to the son solely on account of certain texts of the sages (see ante, pp. 708—714,) and especially the text of Manu cited in the foot note at page 1711.

**SUCCESSION TO THE SEPARATE PROPERTY OF A CHILDLESS WOMAN.**

There is no difference in the order of succession to a childless woman's property in consideration of that being received by her at the time of nuptials or at any other time. The only difference that exists is amongst the brother, husband, father, and mother, in the succession to the property given to her by her kindred (a,) her see or gruituity, and any thing bestowed after marriage, and at the marriage of the brāhma and four following forms,§ and at the śūra and two following forms.¶ After the heirs as far as the above, there is no dif-

---

* As for a passage of Manu, "The wealth of a woman, which has been in any manner given to her by her father, let the Brāhma damsels take; or let it belong to her offspring," since the text specifies "given by her father," the meaning must be, that property, which was given to her by her father even at any other time, besides that of the nuptials shall belong exclusively to her daughter, and the term Brāhma is merely illustrative (indicating that a daughter of the same tribe with the giver inherits.) The precept which directs that 'the property of a childless woman shall go to her surviving husband;' does not here take effect. Such is the meaning of the passage, for else, (according to the preceding interpretation) all the texts (which declare the equal right of the son and daughter to inherit their mother's property in certain cases) would be incongruous."—Coleb. Dā. bhd. p. 83.

† See pp. 149—153 of the seven Commentaries on the Dāya-bhāga carefully printed by Baboo Prosanno-coomar Tagore.

‡ See ante, pp. 274, and 284.

ference in the order of succession to any kind of *stṛi-dhan* of a childless woman; that is to say, there is but one order of succession to the *stṛi-dhan* of whatever description it may be, and in whatever form of marriage that woman may have been married.

To a woman’s peculium given by the kindred (a,) her fee or gratuity, or property bestowed on her after marriage,—

**Vyavastha**: 470. First, the brother succeeds.*

**Authority.** I. That which has been given to her by her kindred (a,) as well as her fee or gratuity (i,) and any thing bestowed after marriage, her kinsmen take (a,) in she die without issue.*—Jāṇyavalkya.

(a) Given by her kindred—Presented to her by her father or mother. Hence (since the words “given by kindred” intend given by the father and mother,) their sons, who are her brothers, are the kinsmen here signified.

By the phrase “given by her kindred” is signified that which was given to her by her parents during her maiden state. For anything received by her, subsequently to her nuptials, is comprehended under the denomination of ‘gift subsequent (*anvādheya*).’ and either the husband, or the parents, inherit that which was presented at the time of the wedding.*

(l) What is given to a woman by artists constructing a house or executing other work, as bribe to send her husband or other persons (of her family) to labour on such particular work, is her fee. It is the price (of labour;) since its purpose is to engage (a labourer.) Or a fee is that which is described by Vyāsa, “What (is given) to bring the bride to her husband’s house, is denominated her fee.”† That is, what is given by way of bribe or the like to induce her to go to the house of her husband. This fee, (as described in both the passages above cited,) occurs indiscriminately in any form of marriage, whether that termed brāhma or another. Such, or any similar property of a childless woman, her brothers inherit. But it does not intend a gratuity (*shulka*) presented to damsels at marriage called āśura and the rest. For that gratuity is restricted to the particular form denominated āśura (and does not occur in the rest.)*

---

† See ante, pp. 683 and 685.
VYAVASTHA-DARPANA.

Authority. II. "Immovable property, which has been given by parents to their daughter, goes always (e) to her brother, if she die without issue.*—VRIDDHA-KATYAYANA.

(e) For it appears that the brother's right of succession is founded simply on her leaving no issue. The remark of Vishwa-rupa, that property of a childless woman married by any form of nuptials, from that of Brâhma to that of Poishâcha, goes to her brother, should therefore be respected. Under the term "immovable," the same must be true of other property by the argument a fortiori, exemplified in the loaf and staff.* (See the first note of the next page.)

III. Wealth received by a woman after her marriage, from the family of her father or mother, or of her husband, goes to her brothers.*

Vyavastha. 471. In default of the brother, the mother succeeds; failing her, the father succeeds.*

Authority. "The sister's fee belongs to the uterine brothers; after them, it goes to the mother; and next to the father. Some say, before her."*—GOUTAMA.

The meaning of the passage is this: in the first place that property goes to her brothers of the whole blood. But, on failure of them, it belongs to the mother. In her default, it devolves on the father. Some say before. This is stated as the doctrine of others.*

Therefore, the property goes first to the whole brothers; if there be none, to the mother; if she be dead, to the father.*

Vyavastha. 472. On failure of these, it devolves on the husband.*

Authority. That, which has been given to her by her kindred, goes, on failure of kindred (o), to her husband.*—KATYAYANA cited in the Dâya-bhâga and other books.

(o) By saying "on failure of kindred," the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of brothers, (the failure of the preferable claim) must be

concluded by the argument a fortiori, exemplified in the case of the loaf and staff. *

Succession to a childless† woman’s property not given by her parents, and not received as a fee or gratuity, or gift subsequent.

If a childless† woman was married according to the form denominated Brāhma, Doiva, Ārsha, Gândharva, or Prājāpatya, then, to her separate property, not given by her father, † or kindred, and not received as fee or gratuity, or gift subsequent, §—

Vyavastha’. 473. First her husband succeeds. ¶

Authority. I. The wealth of a childless† woman, married according to the form denominated Brāhma or the remaining four forms, goes to her husband. ¶—Manu.

11. The separate property of a childless† woman married in the form denominated Brāhma, or in any of the four (unblamed forms of marriage) goes to her husband (a. ¶)—Jāgyavalya.

(a) The four forms of marriage, at the head of which is that called Brāhma are here intended. Those four are the Doiva, Ārsha, Prājāpatya, and Gândharva: with the Brāhma, they make five. For Manu has specified five: namely, “the ceremonies called Brāhma, Doiva, Ārsha, Gândharva, and Prājāpatya.” ¶—Dā. bhā. p. 88.

Vyavastha’. 474. On failure of her husband, her brother is the next successor. ¶

* That is, a staff having been thrust through a loaf, the loaf is missing, and the staff is observed to have been knawed by rats: it is concluded, that the loaf has been devoured by them. This example of analogy, to which frequent allusion is made, in argumentative writings, is variously stated. According to one explanation, the reasoning exemplified by it, is analogy drawn from association. According to another, it is an argument a fortiori.—See Coleb. Dā. bhā. p. 30
† ‘Childless’—that is, destitute of a son, daughter, the son of a rival wife, son’s son, daughter’s son, son’s grandson (in the male line,) and the rival wife’s grandson and great grandson in the male line.—Srīkṛṣṭhi’s Commentary on the Dāiva-bhāṣya, Sānś. p. 98.
‡ See ante, pp. 622, 683.
§ See ante, pp. 616—683.
Vyavastha. 475. In default of the brother, the mother succeeds; in her default, the father is the successor.*

But if she were married according to any of the three forms of marriage, styled Āsura, Rikshasa, and Poishācha, then to her separate property of the above description,—

Vyavastha. 476. The mother succeeds first; failing her, the father; in his default, the brother; then the husband is the successor.*

Authority. In default of successors, including the barren and widowed daughters, the succession devolves in due order, by the rule of analogy, as in the case of wealth received at nuptials, viz. on the woman's husband, brother, mother, and father, if she were married according to any of the five forms denominated "Brāhma;" and the rest, and if she were married according to any of the three forms, styled Āsurā, &c. on her mother, father, brother, and husband.—Dā. kra. sang. p. 57.

Succession of heirs in default of successors as far as the husband, mother, brother, and father to any description of separate property of a woman married according to any form of marriage.

Then to any description of the separate property of a woman married according to any of the forms of marriage,—

Vyavastha. 477. First the husband's younger brother succeeds.†

Authority. In default of successors down to the father, in respect of wealth received at nuptials solemnised according to any one of the five forms of marriage, denominated Brāhma and the rest, and on failure of successors down to the husband, in respect of wealth received at nuptials, celebrated according to any one of the three forms styled Āsurā, &c., as well as in the case of all other pecu-

liar property of a woman, the succession devolves on the husband's younger brother: for the right of the husband's younger brother and the rest to succeed at that time has been propounded by Vṛihṣapati in the following text:—

"The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the elder brother's wife are pronounced similar to mothers: if they leave no issue of their bodies, nor son, nor daughter's son, nor son of those persons, the sister's son and the rest shall take the property."*

But the order of succession prescribed by the above text is not to be respected; for if this were the case, it would follow that the husband's younger brother would succeed last, and this would be improper, since he confers greater benefits than all the others who are specified in that text; and the following texts of Manu: "To three ancestors (i.e. the father, paternal grandfather and great-grandfather) must water be given at their obsequies; for three is the funeral cake ordained: to the nearest sapinda the inheritance next belongs," are recited in a treatise of inheritance, for the purpose of exhibiting that the order of succession takes place according to the greater or less benefits conferred; otherwise the introduction of them in such a treatise would be useless; consequently the order of succession must be understood as taking place according to the proximity of benefits conferred, and, this being the case, the order inferable from the spirit of the text, rather than that derived from the letter of it, must be respected. Therefore the husband's younger brother is the first entitled to the succession, because he presents oblations to the woman, to her husband, and to three persons to whom her husband had to offer oblations, and he is moreover a sapinda.—Dā. kra. sang. pp. 59—62.

* The word issue (ouvase) in this text implies both son and daughter. 'Nor son,' must be considered as intending the 'son of a rival wife.' It must not be supposed discriminative of the word 'issue,' since it would be unmeaning, and it would follow that the succession devolved on the husband's younger brother and the rest, even while the son of a rival wife was existent. 'Nor son of those persons,' here by 'those persons' the son, and the son of a contemporary (or rival) wife are intended: the expression does not refer to the damsels' son and daughter's son's son, for the damsel's son is included in the term daughter's son, and the daughter's son's son confers no benefits, being incompetent to preside the funeral offering (to the woman's husband.) By the term 'Vā' or (of wife) the sons of the son and of the son of the rival wife are to be understood.—Dā. kra. sang. p. 60.
SINCE the text (of Vṛṣṇiśati) enumerates 'sister's son,' &c., if the heir of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger other of the husband, contrary to the opinion and practice of verable persons; therefore, the text is propounded, not as declaratory the order of inheritance, but as expressive of the strength of the 2, (namely, of the benefits conferred.) Thus it is declared by Manu under the head of inheritance; "To three ancestors must water be ren at their obsequies; for three is the funeral oblation of food or native: the fourth is the giver of oblations; but the fifth has no concern with them." In like manner Jáñavalkya shows succession property in right of the funeral oblation: "Among these (sons of royal desc.) the next in order is heir, and giver of oblations, failure of the preceding." The son's preferable right, too, appears rest on his presenting the greatest number of beneficial oblations, on his rescuing his parent from hell. And a passage of Vaiśñava Rātātapa expressly provides for the funeral oblations of these women: for the wife of a maternal uncle, or of a sister's son, of a father-law, and of a spiritual parent, of a friend, and a maternal grand-her, as well as for the sister of the mother, or of the father, the ob- lation of food at obsequies must be performed. Such is the settled le among those who are conversant with the Vedas." This then the order of succession, according to the various degrees (of benefit the owner of the property) from the oblation of food at obsequies. the first place, the husband's younger brother is entitled to the man's property; for he is a kinsman (sapinda,) and presents obla ions to her, to her husband, and to three persons to whom obla ons were to be offered by her husband.—Coleb. Dā. bhd. pp. 97, 98.

478. In his default, the succession devolves at once upon the sons of the husband's you and elder brothers.

---

of the same village with her. It has subsequently been laid down in the
said work that, "failing all these, in the case of property of a brāh-
manī woman, brāhmanas, inhabitants of the same village, and exceeding-
ly learned in the Vedas, are entitled to the succession. But in the
case of the property of women of the Kṣetriya and other tribes, the
king is exclusively entitled to the inheritance.*" This also appears
to have been established in accordance with the order of succession
to the property of males, as laid down in that book, wherein it will
however be found that, even to the property of women of the Kṣetriya
and other classes, brāhmanas of the above descriptions succeed before
the king, and that the king can never succeed to a brāhmaṇi's pro-
erty, which must be taken by a brāhmaṇa.—See ante, pp. 308—310.

Legal Opinions delivered in, and admitted by, the several courts of
judicature, and examined and approved of, by Sir
William Macnaghten.

Q. A woman, having purchased some landed property with her
own funds, died leaving sons and a grandson, whose father died before
her. In this case, will the whole property left by her devolve on her
sons, or has the grandson any right to share it with his uncles?

A woman's prop-
erty goes to her
sons, to the exclu-
sion of her grand-
son, whose father
died before her.

R. Under the circumstances above stated, the sons
of the deceased woman are entitled to her entire
estate which had been acquired by herself. The
grandson whose father previously died has no right
to inheritance. Should there be any maiden daughter, a small por-
tion must be given to defray her nuptial expenses.†

Authorities.—Manu: "When the mother is dead, let all the uterine
brothers and uterine sisters equally divide the maternal estate."

† Df. bru. sung. p. 29.

* It appears that the property in this case, though acquired by the woman, was not
of the nature termed her stri-dhan or personal, and the descent of it was consequently not
governed by the rules applicable to that species of property. Had this been the case, the
daughter would have been a co-heir with the sons.—Note by Sir W. Macnaghten.

This eyavanah† agrees neither with the rules governing the descent of stri-dhan, nor
with those applicable to inheritance in general. Although the authority quoted regards
stri-dhan, yet the eyavanah† in question is not according to the rules governing such pro-
erty, as, in that case, the daughter would succeed to an equal portion with any of the sons:
on the other hand, that is, in case the property had been deemed to be an inheritance, and
not stri-dhan, the grandson whose father is dead would have been a co-heir with his uncles.

Q. A Hindoo, on the marriage of his daughter, gave her one bigha of land as (joutaka) peculiar property, which she enjoyed during her life-time. She was survived by a daughter and son, the latter of whom took and retained possession of the property. Before his death, he gave the land in question to a stranger, his sister's son being then living; after his death, it did not clearly appear who had performed his funeral obsequies. Under these circumstances, was the alienation by the son valid?

R. The property in question belonged of right to the daughter of the original donee; and her son, having no proprietary right in the same, any alienation of the property by him was invalid.


Q. A Shâhâra woman succeeded by the law of inheritance to two houses acquired by her father. After her marriage, her husband was in possession of the houses, inasmuch as they were their place of residence. The husband executed a deed of sale for the houses in question to a third person. The wife, however, remained in possession of them. Under these circumstances, was the husband competent to make the alienation in question?

R. The husband was not competent to alien the houses inherited by his wife, and the sale by him was consequently wholly invalid, as marriage does not confer on the husband any right to dispose of a paternal estate to which his wife had succeeded before marriage.

City of Moorshedabad, Manick-chund versus Chotee-laun.—Macn. H. L. Vol. II. Ch. III., Case 9. p. 127.

Q. On the death of an individual, his widow contracts a second marriage. The widow formerly had received some jewels from her parents, and her second husband chastised her for adultery and divorced her. In this case, is the husband legally competent to punish his
wife and to divorce her? If so, does the woman become sole proprietor of the property given to her by her parents and former husband?

Divorce on account of adultery does not subject the woman to the loss of her peculiar property.

R. The husband is at liberty to divorce his wife who violates his bed; but the adulteress is entitled to her parents' and former husband's gift of jewels.*


**Remark.** Although, according to the *Achára-kánda*† of the Hindu law, the woman who burned herself with the body of her husband is taken to have died at the time with her husband, and the *Srédhás* of both of them are simultaneously performed, yet, according to the *Vyavahára-kánda* of that law, her death is held to have occurred after that of her husband, she having actually died after him, and any gift, &c. made by her after her husband's death being good and valid under the idea of her being then alive and in possession of her senses.

Consequently,—

486. Whatever is given to her by the husband, on condition of the same being her property after his death, becomes her *strí-dhan* at the time mentioned, and devolves after her death on the heirs of her *strí-dhan*.

487. *Strí-dhan* inherited by woman ceases to be her *strí-dhan*, but is treated as the property which devolves under the ordinary rules of inheritance, and as such, it descends after her death on the heir of the former owner.‡

On the death of a maiden daughter, or of one affianced, in whom the succession (to the *strí-dhan*) had vested, and who, having been

* In the *Kali* (or present) age, according to the *Hindu* law, the marriage of a widow is forbidden; but this practice is prevalent among the inferior classes.
† See preface, p. I.
‡ It may be here observed that *Strí-dhan*, which has once devolved according to the law of succession which governs the descent of this peculiar species of property, ceases to be ranked as such, and is ever afterwards governed by the ordinary rules of inheritance.—Macn. H. L. Vol. I. p. 38,
subsequently married, is ascertained to have become barren, or a widow without giving birth to a son, the property which has passed to her from the mother as an inheritance would devolve next on the sisters, having, and likely to have, male issue, and, in their default, on the barren and widowed sisters,—not on the husband of such daughter (as above mentioned in whom the succession had vested.) For the right of the husband is relative to the woman's separate property, and wealth which has in this way passed from one to another, being ancestral property that has descended by inheritance, can no longer be considered as the woman's separate property.*—See Dā. kra. sang. pp. 46, 47.

Deb-nath Sandial and others versus Patrick Maitland and Henry William Droz, executors of Ros-behary Surmano.

Case bearing on the vyavasthā No. 488.

The bill stated among other things that a legacy of 5000 rupees, left to the wife, lapsed, as she burned herself with the body of her husband, which act of burning related back to the time of her husband's death, and she is supposed, by the laws, customs, and usages of Hindus, to have died simultaneously with her husband; and that the 5000 rupees left to the wife is part of the residue of the testator's estate. The bill prays that the will may be established, that the trusts thereof be decreed and carried into execution, that an account be taken, that the legacy of 5000 rupees left to the wife be declared lapsed, and that the residue be declared to belong to the three grandsons, &c.

The Court did not concur in the statement of the Hindu law, as it was given by the complainants in their bill. The wife who had burned herself with her husband was not admitted to have constructively died at the same time with him, and her legacy did not go to the residue of his estate, but was decreed to her daughters as her representatives. March 1820.—Cons. H. L. pp. 371—374.

Pran-kishen Sing, appellant, versus Mussummat Bhugwuttee,
(widow of Jug-mohun Ghose,) Respondent.

Case bearing on the vyavasthā No. 487.

In the Bengal year 1161, Gourung Sing made over to his daughter Anund-moyee, on her marriage with Jug-mohun a talook and tank, by a deed of gift, reciting

* The above passage slightly differs from Mr. Wynech's translation, which does no appear to be an accurate and faithful one of the Sanscrit text, contained in his own edition as well as in the other editions of the work, q. v.
that he separated it entirely from his own possessions; that he made it over to his said daughter; that she was to get it registered in her husband's name, and hold it as her property. The talook was registered in the khasah in the name of Jug-mohun; and a sanad was granted conformable to the terms of the gift, by the existing Government. Anund moyee died in 1160, without issue male, but left a daughter and that daughter's husband. The daughter died in 1176, leaving a daughter, now living, a widow without issue. Gourung Sing died in 1164, leaving an adopted son Radha-kaunt, who subsequently died. Jug-mohun died in 1196, leaving an adopted son, and Bhugwutee, his third wife. It would appear that after the death of his wife Anund moyee, Jug-mohun held the property in question till his decease; and that it was then taken possession of by his widow Bhugwutee, as his heir. At the suit of Pran-kishen against her, in the Dewanny Adawlut of Moorshedabad, for the right to the property, judgment went for the defendant; in appeal from which judgment to the Sudder Dewanny Adawlut, the question was, who was the rightful heir to the property of Anund moyee at her demise? On this point the Paudit was called on to explain the law; and the answer of Radha-kaunt Paudit was this: "Upon the death of Anund moyee the property devolves on her daughter. It comes under the description of stri-dhan, and as such devolves on the daughter. But it is not the stri-dhan of the daughter, and upon her death it will not go to her daughter, but to the brother of her mother, and, if he be not living, to his son. The Sudder Dewanny Adawlut (present Earl Cornwallis, F. Speke, W. Cowper, and T. Graham,) adjudged, that the claimant should recover the property, and passed a decree accordingly, reversing that of the Zillah Judge." 25th of April 1793.—S. D. A. R. Vol. I. p. 3.

* The property, having been given to Anund moyee by her father, on the occasion of her marriage was undoubtedly her stri-dhan, (Jimitava-dhana, Chap. IV. Sect. 1,) and should have devolved upon her death, on her daughter, whether unmarried, married, or widow. (Ibid. Sect. 2, § 12 and 22.) But on the demise of that daughter, the land being in respect of her, an inheritance, and not the peculiar property termed stri-dhan, it would not pass to her daughter, a childless widow, (Jimitava-dhana, Chap. II. Sect. 2, § 3,) but to the next nearest heir. This appears to be the ground of the opinion delivered by Radha-kaunt Paudit in this cause; and it supposes the childless widow to have been at the time of her mother's decease; for, if she had been then unmarried, or if her husband had been living, she would have succeeded to her mother's property of every sort, in preference to the mother's brother or his son; (Jimitava-dhana, Chap. II. Sect. 2,) who could only have come in after her decease. (Ibid. § 80.)
TABLE OF THE ORDERS OF SUCCESSION TO THE DIVERSE DESCRIPTIONS OF STRI-DHAN OR WOMAN'S PECULIUM.

ORDER OF SUCCESSION TO THE PECULIUM OF AN UNMARRIED DAUGHTER.

1. The whole brother.  
2. The mother.  
3. The father.

Failing these, her parents' relations, as they happen to be, succeed according to the order of succession to a childless woman's property. e. v.

To a betrothed girl's property given by her to-be husband.—First, the husband succeeds; in his default, the above mentioned heirs succeed according to the above order.

ORDER OF SUCCESSION TO THE STRI-DHAN OF A MARRIED WOMAN HAVING CHILDREN.

<table>
<thead>
<tr>
<th>To her property received at the time of her saptis: —</th>
<th>To that received at any time other than that of her saptis: —</th>
<th>To that given by her father at any time other than that of marriage: —</th>
</tr>
</thead>
</table>
| 1. The unmarried daughter, not betrothed,  
  2. The betrothed daughter,  
  The daughter who has a son,  
  3. The daughter likely to have a son,  
  4. The (sonless) widowed daughter,  
  5. Son,  
  6. Daughter's son,  
  7. Son's son,  
  8. Son's grandson in the male line,  
  9. The son of a rival wife,  
  10. Her son's son,  
  11. Her son's grandson in the male line,  | 1. Son,  
  2. Unmarried daughter,  
  3. The daughters having a son,  
  4. The daughter likely to have a son,  
  5. Son's son,  
  6. Daughter's son,  
  7. Son's son,  
  8. Son's grandson in the male line,  
  9. The son of a rival wife,  
  10. Her son's son,  
  11. Her son's grandson in the male line,  | 1. The unmarried daughter,  
  2. Son,  
  3. The daughter having a son,  
  4. The daughter likely to have a son,  
  5. Son's son,  
  6. Son's son,  
  7. Son's grandson in the male line,  
  8. The son of a rival wife,  
  9. Her son's son,  
  10. Her son's grandson in the male line,  |

ORDER OF SUCCESSION TO A CHILDLESS MARRIED WOMAN'S STRI-DHAN.

<table>
<thead>
<tr>
<th>Given by her parents before marriage, her fee or gratuity, or bestowed after marriage. —</th>
<th>Given by her parents before marriage, her fee or gratuity, or bestowed after marriage. —</th>
</tr>
</thead>
</table>
| 1. The whole brother,  
  2. The mother,  
  3. The father,  
  4. The husband,  | 1. The husband,  
  2. The brother,  
  3. The mother,  
  4. The father,  |

SUCCESSION OF HEIRS AFTER THOSE AFORESAID TO ANY DESCRIPTION OF PROPERTY OF A WOMAN MARRIED ACCORDING TO ANY OF THE EIGHT FORMS.

| Husband's younger brother,  
  8. Husband's sister's son,  
  9. Her own brother's son,  
  10. The sons of the husband,  
  11. Her younger and elder brother,  
  12. Her sister's son,  | 13. The Supindas,  
  14. The Sakyalys,  
  15. Samudredhikas,  
  16. Samudra-potras,  
  17. Samudra-proutras,  |

* See ante, p. 718, 719. † See ante, p. 719. ‡ ante, p. 719, 720. § ante, pp. 726, 727.
CHAPTER IX.—ADOPTION

SECTION I.—A SON IS NECESSARY.

Vyavastha. 488. It is necessary for every person to have a son for the presentation of the oblations of food and libations of water, the discharge of his debts (spiritual and temporal,) and the attainment of future beatitude.

Authority. I. A Brâhmaṇa, immediately on being born, is produced a debtor on three obligations: to the holy saints, for the practice of religious duties: to the gods, for the performance of sacrifice: to his fore-fathers, for offspring. Or, he is absolved from debt who has a son, has performed sacrifices, and practises religious duties.—D. Mîm. Sect. I., § 5.

II. When he has paid three debts to the sages, the manes, and the gods, let him apply his mind to final beatitude; but low shall he fall, who presumes to seek beatitude, without having discharged those debts. After he has read the Vedas in the form prescribed by law, has legally begotten a son, and has performed sacrifices to the best of his power, (and has paid his three debts,) he may then apply his heart to perternal bliss. But if a Brâhmaṇa have not read the Veda, if he have not begotten a son, and if he have not performed sacrifice, yet shall aim at final beatitude, he shall sink to a place of degradation.—Maṇu, Ch. VI, vv. 35—37.

III. Fathers desire male offspring for their own sake, (reflecting,) this son will redeem me from every debt whatsoever due to superior and inferior being: therefore a son, begotten by him, should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment. If a devout man, or one who maintained the sacrificial fire, die a debtor, all the merit of his devout austerities, or of

* The future beatitude of a man depending, according to Hindu superstition, on the performance of his obsequies and the payment of his debts by a son, as the means of redeeming him from an instant state of suffering after death. The dread is, of a place called put; a place of horror, to which the manes of the childless are supposed to be doomed; there to be tormented with hunger and thirst, for want of those oblations of food and libations of water, at prescribed periods which it is the pious, and indeed indispensable, duty of a son (put-tra) to offer.—Str. H. L, Vol. 1. pp. 61, 92.
his perpetual fire, shall belong to his creditors.—Nárada. See Coleb. Dig. Vol. I. p. 299. (Calcutta edition.)

IV. He, who, having received a sum lent or the like does not repay it to the owner, will be born (hereafter) in his creditor’s house, a slave, a servant, a woman, or a quadruped.—Vrihaspati.—Ibid.

V. From passages of scripture, such as, “or he is absolved from debt who has issue,” &c. this precept resulting, ‘Let him procure absolution from debt through a son,’ it is established, that the son, as being the instrumental cause of such absolution, is a means of completion.—D. Mīm. Ch. I. § 38.

VI. The precept enjoining the production of a son being positive, its result is that the contravention of it, is the cause of an offence.—D. Mīm. Ch. I. § 5.

VII. Heaven awaits not one destitute of a son.—Ibid.

VIII. Since a son delivers (trāyate) his father from the hell called ‘put,’ therefore he is named put-tra by the Self-Existent himself.—Mānū and Viśṇu.

IX. Certain hell is named ‘put,’ and he, who is destitute of offspring is tormented in hell; a son is therefore called put-tra, because he delivers his father from those regions of horror.—Hārīta.

X. A father is exonerated in his life time from the debt to his own ancestors, upon seeing the countenance of a living son: he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three Vēdas, and sacrifices rewarded with ample gratuities, have not the sixteenth part of the efficacy of the birth of an eldest son.—Śāṅkha and Likhita.

XI. By a son, a man conquers worlds; by a son’s son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode.—Mānū, Śāṅkha, Likhita, Viśṇu, Vāshishtha, and Hārīta.

XII. The attainment of worlds, immortality and heaven depend on a son, grandson, and great-grandson.—Jānayavalkya.

XIII. The sage Dandapāla, desiring admission to a region of bliss was repulsed by the guards who watch the abode of progenitors, because he had no male issue.—Mahā-bhārata.—See Coleb. Dig. Vol. III. p. 253.
lier property of a woman, the succession devolves on the husband's younger brother: for the right of the husband’s younger brother and the rest to succeed at that time has been propounded by Vṛihāsūti in the following text:

"The mother’s sister, the maternal uncle’s wife, the paternal uncle’s wife, the father’s sister, the mother-in-law, and the elder brother’s wife are pronounced similar to mothers: if they leave no issue of their bodies, nor son, nor daughter’s son, nor son of those persons, the sister’s son and the rest shall take the property.”

But the order of succession prescribed by the above text is not to be respected; for if this were the case, it would follow that the husband’s younger brother would succeed last, and this would be improper, since he confers greater benefits than all the others who are specified in that text; and the following texts of Manus: "To three ancestors (i.e. the father, paternal grandfather and great-grandfather) must water be given at their obsequies; for three is the funeral cake ordained: to the nearest sapinda the inheritance next belongs," are recited in a treatise of inheritance, for the purpose of exhibiting that the order of succession takes place according to the greater or less benefits conferred; otherwise the introduction of them in such a treatise would be useless; consequently the order of succession must be understood as taking place according to the proximity of benefits conferred, and, this being the case, the order inferable from the spirit of the text, rather than that derived from the letter of it, must be respected. Therefore the husband’s younger brother is the first entitled to the succession, because he presents oblations to the woman, to her husband, and to three persons to whom her husband had to offer oblations, and he is moreover a sapinda.—Dá. kra. sang. pp. 59—62.

* The word issue (ourasa) in this text implies both son and daughter. 'Nor son,' must be considered as intending the 'son of a rival wife.' It must not be supposed discriminative of the word 'issue,' since it would be unmeaning, and it would follow that the succession devolved on the husband's younger brother and the rest, even while the son of a rival wife was existent. 'Nor son of those persons,' here by 'those persons' the son, and the son of a contemporary (or rival) wife are intended: the expression does not refer to the damsel’s son and daughter’s son’s son, for the damsel’s son is included in the term daughter’s son, and the daughter’s son’s son confers no benefits, being incompetent to present the funeral offering (to the woman’s husband.) By the term 'Vad' or (of any) the sons of the son and of the son of the rival wife are to be understood.—Dá. kra. sang. p. 60.
Since the text (of Vṛttaśāti) enumerates 'sister's son,' &c., if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons; therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact, (namely, of the benefits conferred.) Thus it is declared by Manu under the head of inheritance; "To three ancestors must water be given at their obsequies; for three is the funeral oblation of food ordained: the fourth is the giver of oblations; but the fifth has no concern with them." In like manner Jáényavalkya shows succession to property in right of the funeral oblation: "Among these (sons of various descriptions,) the next in order is heir, and giver of oblations, on failure of the preceding." The son's preferable right too, appears to rest on his presenting the greatest number of beneficial oblations, and on his rescuing his parent from hell. And a passage of Vrindadva Shatátpa expressly provides for the funeral oblations of these women: "For the wife of a maternal uncle, or of a sister's son, of a father-in-law, and of a spiritual parent, of a friend and a maternal grandfather, as well as for the sister of the mother or of the father, the oblation of food at obsequies must be performed. Such is the settled rule among those who are conversant with the Védas." This then is the order of succession, according to the various degrees (of benefit to the owner of the property) from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman (sapinda,) and presents oblations to her, to her husband, and to three persons to whom oblations were to be offered by her husband.—Coleb. Dá. bhá. pp. 97, 98.

Vyavastha. 478. In his default, the succession devolves at once upon the sons of the husband's younger and elder brothers.*

---

Because they present oblations to the woman, to her husband, and to two persons to whom her husband had to offer oblations, (namely to his father and grandfather,) and they are moreover within the degree of relationship termed 'sapinda.'

479. In their default, the (woman's) sister's son, though not a sapinda, is entitled to the succession.*

For he presents oblations to the woman, and to three persons, namely, her father, and the rest to whom her son was bound to offer oblations.

480. Failing him, the husband's sister's son (is heir.*)

For he presents oblations to her, to her husband, and to three persons to whom her husband had to offer oblations.*

481. In his default, the woman's brother's son succeeds.*

For he presents oblations to the woman, and to her father and grandfather.

482. Failing him, the son-in-law succeeds.*

Since he presents oblations to his father-in-law and mother-in-law.*

This order of succession must be assumed: and the mention of 'a sister's son,' and the rest, (in the text of Vrihaspati cited,) was intended merely for an indication of the heirs, without specifying the order in which they succeed.—Coleb. Dá. bhá. p. 99.

Vrihaspati's text above quoted, propounds therefore merely the right of succession by the persons above mentioned, and is by no means intended to exhibit the order in which they succeed.—Dá. kra. sang. p. 63.

483. In default of heirs as far as the son-in-law, the father-in-law succeeds, after him the husband's elder brother.

484. In the next place, kinsmen allied by funeral oblations (sapindas†) succeed in the
of proximity. *

ority. On failure of these six, † it must be understood that
the succession devolves on the father-in-law, the
his elder brother, and the rest, according to their nearness of
the nearest sapinda being the heir.)—Coleb. Dā. bhā. p. 99.

485. In default of the sapindas, the sakulyas,
(distant kinsmen connected by family †) are
after them the sumānodakas (persons allied by similar
as of water, †) succeed in the order of proximity.*

The heirs to a stri-dhan as recognised by the Dāya-
bhāga are as far as the sapindas; to which have been
the sakulyas and samānodakas by Śri-krishṇa in his comment-
the Dāya-bhāga, as well as in the Dāya-krama-saṅgraha;§ in
er it has been moreover laid down that persons descended from
the patriarch in the male line (samāna-pravaras,) succeed in the
way as to the property of males. "¶ The order of succession to
cess woman’s stri-dhan in default of heirs as far as the sapindas,
established according to nearness of kin, just as to the pro-
f males, that order is not inapplicable here. But if such order
was in the succession to the stri-dhan, persons bearing the same
name samāna-gotra should succeed before those descended from
him (samāna-pravaras,) inasmuch as they being descended from the
rimitive stock as well as patriarch, are more nearly allied, and
re preferable to the samāna-pravaras: the succession of the
-gotras may, however, be deduced from the above passage, they
cluded among the samāna-pravaras. But to be heirs to a wo-
seculium, persons of the above descriptions should be inhabitants

† Dā. kra. saṅg. pp. 62, 63;—Dā. bhā. pp. 98—100. See also Mana. H. L.
see ante, pp. 305—307.
ix enumerated from the husband’s younger brother to the son-in-law. See ante
§12.
The portion in Italic is omitted in Mr. Wynch’s translation: the original of
an will be found in the Sanskrit text printed by him and annexed to his trans-
well as in the other Editions.
perform all those acts just as a son. The author of the Dattaka-
chandrika, considering the prolonging of lineage to be the principal
cause of adoption, has laid down that it is necessary to adopt a son
notwithstanding there be a brother's son to present the oblations of
food, libations of water, and perform the solemn rites. This dictum
of his appears to be very just, inasmuch as even the presentation of
the oblations of food and libations of water must in some remote period
cesso without the celebrity of name, that is, continuance of the line-
age, which therefore is the principal cause of adoption. Thus a son
is adopted not only for the sake of the funeral cake, water, and solemn
rites, but also for prolonging the lineage, which all collectively, not
singly, constitute the cause of adoption.

Vyavastha. 493. The substitute for a son is necessary,
notwithstanding a widow's capacity to present
the oblations of food and libations of water to the manes of her
husband.

Reason. Since her presentation of the oblations of food and
libations of water to her deceased husband alone does
not obviate the necessity for having a son, who is adopted chiefly to
perform the párvaṇa Shráddha,* to deliver the adopter from the hell
called 'put,' and to prolong his lineage, which are beyond the capa-
city of a widow.

Authority. "On failure of the son, let the wife be," &c.†—
Although by this and other passages the capacity of
the wife, and other (heirs) also, to perform the obsequies, is declared:
still it must be unquestionably affirmed that from the authority of such
passages as this ("Heaven awaits not one destitute of a son," ) the
mansions of the happy attainable by obsequies performed by a son,
are not acquired by such rites performed by the wife and the rest.
For, otherwise, the wife and other heirs, of one destitute of male issue,
being competent to perform rites, which would be equally effective,
the specification of failure (of the son,) would be unmeaning; as an
alternative results, from such equality.—Hence, for the acquisition of

* See ante, p. 20.
† Sankha. The sequel is thus, "(the performer of the funeral rites,) in her default,
the whole brother." D. M. in Sect, I. § 58, Note.
Dacca Court of Appeal, May 21st, 1881. Raghunandan Sarma versus Gopee-nath Bhattacharya and others.—Macn. H. L. Vol. II. Ch. III. Case I, p. 121.

Q. A Hindoo, on the marriage of his daughter, gave her one bigha of land as (joutaka) peculiar property, which she enjoyed during her life-time. She was survived by a daughter and son, the latter of whom took and retained possession of the property. Before his death, he gave the land in question to a stranger, his sister's son being then living: after his death, it did not clearly appear who had performed his funeral obsequies. Under these circumstances, was the alienation by the son valid?

The daughter or her heir inherits the mother's peculiar property, in preference to the son.

R. The property in question belonged of right to the daughter of the original donee; and her son having no proprietary right in the same, any alienation of the property by him was invalid.


Q. A Shástra woman succeeded by the law of inheritance to two houses acquired by her father. After her marriage, her husband was in possession of the houses, inasmuch as they were their place of residence. The husband executed a deed of sale for the houses in question to a third person. The wife, however, remained in possession of them. Under these circumstances, was the husband competent to make the alienation in question?

The estate of a woman does not vest in her husband.

R. The husband was not competent to alienate the houses inherited by his wife, and the sale by him was consequently wholly invalid, as marriage does not confer on the husband any right to dispose of a paternal estate to which his wife had succeeded before marriage.


Q. On the death of an individual, his widow contracts a second marriage. The widow formerly had received some jewels from her parents, and her second husband chastised her for adultery and divorced her. In this case, is the husband legally competent to punish his
II. And moreover, the assigning, in the following text, of the fifth place, in the order of succession, to the estate of one, who died without male issue, would be contradicted. "The wife, and the daughters, also: both parents, brothers like-wise, and their sons, &c."—The exposition of this, is thus: If the brother's son, though unadopted, bear filial relation (to his uncle,) the enumeration of the brother's son, on account of his wanting such relation, in the fifth place, in the order of succession to one dying without male issue, would be contradicted. The same also must be understood, in respect to the right in gradation, to perform the obsequies, as declared in this and other texts, "The son, the son of a son, the son of a grandson: like these, the offspring of a brother, or, that of a Sapinda also, are born, oh king! capable of performing obsequies."—D. Mim. Sect. II. § 59, 60.

III. Moreover in the case, where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow that the five brothers destitute of male issue would have each fifty sons; and it would also result that the fifty sons would severally have ten fathers; thus, there would be a great absurdity.—Nor would an intended consequence thus result: for, in the passage ("a substitute for a son must be adopted,") unity, ascribed to the object to be adopted, is of definite import: and the singular number, used in the following passage, to express severally, both the male issue, and the father of the same, would be contradicted. "If one, among brothers of the whole blood, be possessed of male issue, Manu pronounces that they all are fathers of the same by means of that son."—D. Mim. Sect. II. § 64, 65.

IV. Neither must it be alleged that, because the plurality of brother's sons is mentioned in this passage ("those who are fathers of male issue, by means of their own sons, and those of brothers, are completely saved.") many brothr's sons, even though unadopted, may be sons of one person: for, from occurring in respectful modes of expression, in which, by popular acceptance, the plural number is used, it has an indefinite import: also, the injunctive precept proposed, being accomplished in our opinion by means of one only, the propounding many would be contrary to sense and law.—Ibid. Sect. II. § 66.
Vyavastha. 495. The substitute for a son is also necessary for a woman, to present to her (when dead) the oblations of food and libations of water, to perform the other rites for her, and to deliver her from the hell (called) ‘put.’

Vyavastha. 496. She cannot, however, adopt a son without her husband’s assent.†

Reason. She being in this act entirely dependent on her husband and the adoption being made not only for herself but also for the benefit of him.‡

But if her husband, though a sonless man, do not himself adopt a son, nor authorise her to adopt one, then the only means left her for her spiritual welfare is to devote herself after his death to pious austerity.

Vyavastha. 497. A woman must not, however, adopt a son while there exists a son of her rival wife: such adoption, if made, is invalid.

* This necessity can be superseded, in case she, when a widow, devote herself to pious austerity; but for a sonless woman dying during coverture, there is no alternative.—See ante, p. 737.

† In Mithila, however, a woman can adopt, in her own right and for her own sake, a son in the Kritrima form; but such adoption is not provided for by the law as current in Bengal.

‡ The right of adoption, where it exists, is, as between husband and wife, absolute in the husband, though adoption having taken place, the adopted becomes the son of both, and as such, is capable of performing funeral rites to the one as well as to the other.—Str. R. L. Vol. I. pp. 66, 67.

Mr. Sutherland, in his Synopsis, says: “The same reason, which imposes the necessity of adoption on a man, not equally applying to a woman, the latter (at least such seems to be the more accurate and prevailing doctrine) is incapable in her own right of adoption, though it is admitted that, by his sanction, she may affiliate on the part of her husband a son who would necessarily be finally related to herself.”—The first part of this remark, namely, the same reason which imposes the necessity of adoption on a man, does not equally apply to a woman,—does not appear to be quite correct, inasmuch as the inequality alluded to by him is not in respect of the necessity for adoption, (which is the same for both, see ante, p. 337) but in respect of the power to adopt, the husband being able to adopt a son without his wife’s assent, even against her will, and the wife being entirely dependent on him in this matter. As to the means of devoting to pious austerity, it is available not only to a widowed woman, but also to a man unmarried, married, or widower.—See ante, pp. 736 and 737.
REASON. For she being the mother of a son by means of the son of her co-wife, the substitute for a son is unnecessary, and unlawful.—See ante, p. 737.

Authority. I. The affiliation of a son, by a woman proceeding legally, with the sanction of her husband, to constitute for him male issue, only takes place where no son of that person may exist. But, if he have any, although she may be destitute of the same, such adoption does not obtain; for, to proceed therein, would be unproductive of the object.—D. Ch. Sect. I § 24.

II. In that case, she would not be exempted from exclusion from heaven. In anticipation of this objection, the two texts of Manu and Vsihaspati, by propounding the existence of filial relation, in the son of a rival wife, (to his step-mother,) provide for her exemption from exclusion from heaven and the performance of her funeral obsequies; for, except the offspring of her husband, she can have no other. Since (a wife) can have no offspring but the issue of her husband, the son in question even, preserves her lineage. Therefore, where the son of a rival wife exists, as the whole benefits even of a son is attained, no affiliation, (by the step-mother, of him or another,) as a son given, and so forth, takes place.—D. Ch. Sect. I. § 25, 26.

In short.—

Vyavastha. 498. Every person to whom no oursa son has been born, or is not to be born, or being born has died without male issue, is under the necessity of adopting a substitute for such son.

Vyavastha. 499. The substitute was of eleven descriptions

There being generally twelve descriptions of sons including the oursa.

* See ante, pp. 734—737, and the section next following.

Marriage is to be contracted in order to have a son, and a son is required to perform the obsequies; so marriage failing in this most important object, (viz.) the production of an oursa son, i.e. a son begotten by the man himself in lawful wedlock, or in the event of a man not being married, or losing his wife before begetting a son, recourse is necessarily had to the adoption of an artificial son substituted for the oursa, in order that obsequies might not go unperformed, and the celestial bliss be forfeited.—See Str. H. L. Vol. I. pp. 62 & 66.
They are described as follows:—1. "The legitimate son of the body is one who is produced by a lawful wife; 2. the son of an appointed daughter is equal to him; 3. the son of the (soil, or) wife is one begotten on her by an appointed kinsman sprung from the same original stock (with her husband,) or by another person duly authorised; 4. a male child, secretly brought-forth (by a married woman) in the mansion (of her lord,) is considered as a son of concealed birth; 5. the Kānīna, or son born of a young woman unmarried, is considered as the son of his maternal grandfather; 6. a son of the twice married is one born of a woman (by a second marriage) whether she be at the time of this marriage desnflowered or not; 7. a son given is one who is made a gift of by his father or mother; 8. the son bought is one sold by his parents; 9. a son made is one (born of other parents and) adopted by a man for himself; 10. a son self-given is he who gives himself to another; 11. a son of a pregnant bride is one accepted while yet in the womb of the bride; 12. a deserted son."—Jānyavalkya.

Manu also enumerates twelve sons, including the legitimately begotten one (ourasa,) but in some respects he differs from Jānyavalkya. His enumeration is as follows:—1. "The son begotten by a man himself (in lawful wedlock); 2. the son of his wife (begotten in the manner described); 3. a son given (to him); 4. a son made (or adopted); 5. a son of concealed birth (or whose real father cannot be known,) and 6. a son, rejected (by his natural parents,) are the six kinsmen and heirs; 7. the son of a young woman (unmarried); 8. the son of a pregnant bride; 9. a son bought; 10. a son by a twice married woman; 11. a son self-given; and 12. a son by a śādra,† are six kinsmen, but not heirs (to collaterals.)†" "Sages declare these eleven sons,—the son of the wife and the rest,—as specified, to be substitutes for the legitimate son of the body, for the sake of preventing a failure of obsquities."†

The twelve sons enumerated by Manu are really thirteen in number, as said by VrihAshpati:—"Of the thirteen sons who have been enumerated by Manu, in their order, the legitimate son and appointed

† Ch. IX. v. 159 & 160. † D. Mim. Sect. I. § 32. See: Manu, Ch. IX. v. 180.
daughter are the cause of lineage. As oil is substituted by the virtuous for liquid butter, so are eleven sons by adoption, substituted for the legitimate son and appointed daughter.”—D. Ch. Sect. I. § 8.

It appears that the twelve sons enumerated by Manu have been reckoned as thirteen, by enumerating the appointed daughter as distinct from the legitimate son of the body, which two have been reckoned by Manu to be one and the same in effect, and expressed by the term ‘ourasa.’ (See Manu, Ch. IX. vs. 130, 132, 133.)

According to the calculation of some authorities, the number of sons including the ourasa, is extended even to fifteen, as in the following text of law quoted in the Dattaka-mimáná:—1. “The legitimate son, 2. the appointed daughter, 3. the son begotten on another's wife, 4. the son of the wife, 5. the son of an appointed daughter, 6. the son of a twice married woman, 7. the damsel's son, 8. the son received with (in the womb of) a pregnant bride, 9. the son of hidden origin, 10. the son given, 11. the son purchased, 12. the son self-given, 13. the son made, 14. deserted son, and 15. one born of a woman of unknown caste,—are the fifteen sons of a man.” (Sect. II. § 57.)

These plus the son of a Shádrá amount to sixteen. But the appointed daughter and the son of an appointed daughter being reckoned to be one, and the son begotten on another’s wife and the son of the wife being assumed to be one, and the son of a Shádrá woman, and the one born of an unknown caste, being omitted, sons are principally enumerated to be twelve,* as specified by Jágnyavalkya.—See the preceding page.

* Out of the ten lists, exhibited in the Digest, the authors of three only, besides Manu included the Shoudra (the son of a Shádrá woman, married or unmarried, by any other than a Shádrá father) as one of the twelve legal sons. These are Vaiṣṇu, Shankha, and Likhita, with the Káliká-puráṇa;—Vaiṣṇu, and the Káliká-puráṇa together with Manu, omitting the Puriká-puráṇa, as being identified with the son born in wedlock, which Shankha and Likhita admit: the latter omitting the hririma, or son made, as included (it may be) in the Dattaka, or son given.

Vaiṣṇu as well as Manu makes the son of a Shádrá woman the twelfth, calling him ‘a son any how produced irregularly.’ He is said by Manu to be begotten through lust on Shádrá woman, married or unmarried, by a man of the priestly class.—So that, however competent to confer some benefits on his putative father, he was even degraded as a corpse though alive, and thence (in law) called “a living corpse.” It is for these reasons that, he is not reckoned as a son by the other legislators. See Manu, Ch. III. vs. 15, 16. Ch. IX, v. 178. See also Coleb. Dig. Vol. III. pp. 117, 119, 144, 233, 234. and Str. H. L. Vol. II. pp. 184, 185.
The author of the Dattaka-mimansa has in the following words concluded the number of the sons to be twelve: “It is established that there is no contradiction of the number twelve: for the several enumerations in each authority are consistent; since, in some, particular sons are implied, and in others, expressed.”—Sect. 2, § 58.

On failure of the legitimate son, the son of the wife and the rest (as aforesaid) are ordained, to be an eleven-fold substitute. (D. Mima. Sect. I. § 52.) “On failure of the first respectively, invest the next with filial rights.” (Kalika-purana.)—See Coleb. Dig. Vol. III. p. 155.

Nevertheless,—

Vyavastha 500. Of the several sons,—the son of the wife and the rest,—only the Dattaka (the son given) can at present be made a substitute for the ourasa son. (See the notes below, and the note at page 14.)

Authority. I. Of these, however, in the present age, all are not recognised. For a text recites:—“Sons of many descriptions, who were made by ancient saints, cannot now be adopted by men,—by reason of their deficiency of power;”* and against those, other than the son given, being substitutes, there is a prohibition, in a passage of law, wherein, after having been premised,—“The adoption, as sons of those other than the legitimate son, and son given,”—it is subjoined,—“These rules, sages pronounce to be avoided in the Kali age.”*—D. Ch. Sect. I. and 9.

* Mr. Sutherland, in Note No. I. to his Synopsis, says: “On the subject of son, to be affiliated in the present age, the two texts of law quoted in D. Ch. Sect. I. § 9, are usually cited. The term ‘son given,’ occurring in the latter, is explained in the Vyavahara Madhava, and other works, as likewise denoting the ‘son made.’—The putrikatputtra does not appear to be regarded as a subsidiary son, and it is not unreasonable to infer, that the affiliation of such son, would be valid in the present age. The term ‘ourasa’ or legitimate son, occurring in the text noticed, might consistently be construed as also indicative of the putrikatputtra. This term is used to denote a daughter appointed to be a son,
Authority. II. "Sons of many descriptions who are made by ancient saints, cannot now be adopted by men, by reason of their deficiency of power, &c."—On account of this text of Vṛihaspati, and because in this passage, ("There is no adoption, as sons, of those, other than the son given and legitimate son, &c.") other sons are forbidden by Sounaka, in the Kali or present age; amongst the sons, however, (who have been mentioned,) the son given and the legitimate son only, are admitted.—D. Mirm, Sect. I. § 64.

the one appointed to raise up (male) issue, and the son of either. Jāgnya-valkya, declares the putrikā-puttra to be equal to the real legitimate son, and Manu propounds that there is no difference between a son and an appointed daughter, and a son's son and the son of such daughter.—On this it is to be remarked, that the son given (dattaka) and the son made (kritima) having been differently enumerated by Manu, Jāgnyavalkya, and almost all the rest of legislators, the term dattaka cannot consistently be taken to comprehend also the son made, as in that case the separate use of the term kritima would be quite useless and unmeaning. Add to this, the Dattaka chandrika, which is of paramount authority in Bengal, after reciting the texts which enumerate the son made separately from the son given, prohibits the adoption of any description of sons except the son given. As to the putrikā-puttra, that description of son is concluded to have been prohibited with the other sons, she being included amongst them by Jāgnyavalkya and the rest. Thus Jagan-natha, citing Nīlakaṇṭha says: 'Introducing the appointed daughter into this disquisition Jīmēta-vakana had variously discussed the subject. Since the appointment of a daughter (to raise up issue for her father) is now forbidden, the argument is not here inserted for fear of unnecessarily enlarging the hook.' (Coleb, Dig. Vol. III. pp. 493, 494.)—But even if the putrikā-puttra be not reckoned as one of the eleven subsidiary sons, still the appointment of a daughter as putrikā-puttra is repugnant to the immemorial custom of this age, which itself is transcendent law and supersedes the general maxims of the law. Thus it is to be concluded that neither the Kritima, nor the putrikā-puttra, nor any of the other descriptions of sons, except the orasma and dattaka, are at present lawful and current, at least in Bengal.

The observations of Sir Thomas Strange and Sir William Macnaghten regarding the point in question are more accurate and clear. They are as follows:—"And now, these two the son by birth, emphatically so called, (orasma,) and (dattaka,) the son by adoption, meaning always the son given, are generally speaking, the only subsisting ones allowed to be capable of answering the purpose of son; the rest, and all concerning them, being parts of ancient law, understood to have been abrogated, as the causes arose, at the beginning of the present, the Kali age."—Str. H. L. Vol. I. p. 63.

In the present age, two, or at the most three, forms of adoption only are allowed, in these provinces; and the dattaka, or son given, and the kritima, or son made, are the most common. The latter form obtains only in the province of Mithila. In strictness perhaps, adoption in this form should be held to be abrogated, as the affiliation of any but a son legally begotten, or given in adoption, is declared obsolete in the present age: but agreeably to a text of Vṛihaspati, immemorial usage legalizes any practice.—Macn. H. L. Vol. I. p. 65.
SECTION.—III.

ON THE SUBSTITUTE FOR THE OURASA DAUGHTER.

Vyavastha. 501. In default of an ourasa daughter, the adoption of a subsidiary daughter, as substitute for her, appears to have been provided by the law.

Authority. I. It is thus deduced by the author of the Dattaka-mimansa: "As on the defect of the legitimate son, so on defect of a legitimate daughter likewise, daughters of the wife, and the rest, are substitutes."—D. Mim. Sect. VII. § 1.

II. Therefore, should no issue (santati,) such as is contemplated in the passage following, be produced, descent to a region of horror is ordained.—"Not having read the vedas, not having produced issue, (a,) and not having performed the various sacrifices, a regenerate man, desiring absorption, falls into a region of horror."—Ibid. § 3.

III. (a) What prolongs lineage, is santati (issue,) a synonyme of 'prajā' (offspring.)—Thus is explained the word 'apatyā' (offspring) occurring in the passage subjoined: on account of a text of Yāska which expresses,—'apatyam' (offspring) that is, from whom there is exemption from falling into hell (apatana :) or through whom one falls not (apatati) into hell: "For the sake of offspring (apatyā) were women created: woman is the soil: men, the sowers of the seed." And this passage of the Koska or vocabulary of Amara:—"The synonymes signifying 'son' are,—ātmajah, tanayah, sūnuh, sutah, puttra: all these terms, in the feminine, signify a daughter. The terms 'apatyam' and 'tokam' apply to the two sexes.—See Ibid. § 4 & 5.

IV. "Here, 'Pumón' (male) is purumón (comprehending much :) or its etymon is the root puns (to cover, daub, &c.)" Although by this passage from Yāska, the word 'puns' (male) signifies one knowing much;—still from this part of his passage, in question,—"or its etymon, is the root puns (to cover, &c.’)—it must be interpreted, as signifying persons both male and female, possessing the procreative faculty.—Ibid. § 6.

V. Accordingly, Yāska has shown by the following passage, that the term puttra, there occurring, signifies children of both sexes (mithuna.)
That children male and female (mithuna) are heirs, is declared by these two stanzas.—"From my several limbs, thou art distilled; from my heart, thou art produced. Thou art indeed self, but denomin- ated son (putra:) may thou live a hundred years." Manu, descendent from the self-existent, hath declared at the commencement of the world:—"without distinction, that wealth is that of children (putrānām,) male and female (mithuna.) It must not be alleged, that the term 'mithuna,' in the above passage, intends the son and daughter-in-law; for the text,—"From my several limbs, thou art distilled, &c." would be impertinent.—Ibid. § 7, 8.

VI. As for the term 'putra' (son) used in this, and similar texts: "Heaven awaits not one destitute of a son (putra:) that also even signifies both sexes. For it is declared by Pāṇini, in the following rule, to be a complex expression (formed by the rejection of one term, and retention of the other) denoting son and daughter. "The expression 'bhrātri (brother) and 'putra' (son,) are severally inclusive of sister and daughter.—Ibid. § 9.

VII. Accordingly it is said,—"Equal to him is the putrīkā-suta, or daughter appointed to be son;"—and "As a son, so does the daughter of a man proceed from his several limbs;"—and, "If by inauspiciousness of the destiny, a daughter should not be born; then that must be propitiated by the observance of rites, such as repasts in honor of the deceased, on the first day of the dark fortnight, in the same manner as the destiny for a son, by the funeral repasts, and the like, on the fourth day of the same.—Ibid. § 11.

VIII. Therefore, in the same manner, as the son, by reason of being the means of procuring heaven, as the agent in the performance of the funeral repast, and so forth, is principal; the daughter also, the same, by reason of being the means of accomplishing the precept, enjoining gift, the funeral repast, and so forth; in defect of her, a substitute is proper.—Ibid. § 16.

IX. 'Duhitā' (a daughter)—that is 'du-rāhitā,' or 'dāre-hitā,' one remotely benefiting; (derived) like 'dogdhā' (a milker.)' By this analysis Yāṣṭa shews, that the daughter benefits her father, by means of her son also.—Manu likewise: "Now between the sons of his son,
and of his daughter, there subsists in this world no difference: for even the son of a daughter delivers him in the next, like the son of his son." And in the Mahá-bhárata this speech of Gándhári: "This one daughter born after one hundred sons, shall be mature. Hence, I shall obtain worlds acquired by a daughter's son.—This is my persuasion."—D. Mim. Sect. VII, § 17.

Consequently, on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting of even the Kshetra-ja and other adopted daughters as substitutes is established.—Ibid. § 18.

Instances indicating the substitute for a daughter, are found in the Puráṇas.—

Amongst these, the recital to Dasha-ratha, by Su-mantra, of the prophecy by Sanat-kumára, in the Bála-kánta of the Rámaśastra, is an indication of a daughter given.—"In the race of Ikshúvaku, one very meritorious shall be born, by name, the warrior Dasha-ratha: illustrious and constant in truth.—Great freindship shall subsist between him and magnanimous king of Anga; and he shall possess a daughter of exalted destiny, of the name of Sántá. But the king of Anga (called Loma-páda) will be destitute of issue.—That monarch shall intreat the king Dasha-ratha thus:—'I am destitute of offspring; oh! versed in morality, let this girl Sántá, of excessive beauty, with open heart, be given me, for the sake of offspring.'—Then, that Rájá Dasha-ratha, deliberating in his mind, shall give the girl Sántá to the sovereign of Anga. That king having taken the damsel, (his desires being fulfilled,) with gladness of heart, will quickly go to his capital.—That potentate shall bestow the damsel on Rishya-sringa," &c. There also is this address of Dasha-ratha to Loma-páda, "Let your daughter Sántá O! warrior king, go with her husband to my city—an affair of importance has arisen." There is likewise the address of Loma-páda to Rishya-sringa:—"This king Dasha-ratha is my amiable beloved friend. For the sake of offspring for me, this beautiful girl was given by him to me who demanded her: O, Bráhman, Sántá is most dear to me; as myself, oh! sage, he, this king, is thy father-in-law."—Ibid. § 30.

In these questions, from the expressions,—"let be given,"—"shall be given,"—"having taken,"—"and " given," —a rule for the gift is manifest. So it being premised, (that the king of Anga will be)" des-
titute of issue; it follows, from the conclusion (of his prayer) for the sake of offspring, that the daughter given, resembling the legitimate daughter, is a substitute for (male) issue.—Ibid. § 31.

An indication of the daughter purchased, is found in the Hemádrí, from the Skanda Puráṇa: also in the Linga Puráṇa.—D. Mim. Sect. VII. § 32.

An indication of the daughter made, is found in the Hari-bansha, where the offspring of Sura are enumerated. Also in the Padma Puráṇa, in the part treating on the Bhouma-erata, or fast in honor of the planet Mars.—Ibid. § 34, 36.

An indication of the daughter deserted is found in the passage of the first parban of the Mahábhárata, which recites the conversation between Dusmanta and Shakuntalá.—See Ibid. § 38.

Indications of the daughter self-given and the rest must be search-ed for in the Puráṇas.

It is however useless to treat in detail of the substitution of the eleven subsidiary daughters for the one legitimately begotten, because the affiliation of the subsidiary sons, except the Dattaka (the son given,) having been prohibited in the Káli (present) age, the affiliation of the subsidiary daughters, except the Dattiká (the given daughter,) has a fortiori been prohibited, and because the term puttra is declared to be a complex expression inclusive of the son and daughter.

The adoption of a given daughter (Dattiká) is not however consonant with the usage of the good, even though not prohibited by the law.—So usage alone being the obstacle, no blame would attach to the adoption of a daughter in the Dattiká form on its being practised or its practice being sanctioned by the sádhus,* since the ordinances of the sádhus* are equal to the authority with the vedas; and Manú has, in the text subjoined, declared the practice and ordinances of the sádhus to be one of the four descriptions of virtue:—“The scripture, the codes of law, the practice (approved) of the good, and the satis-

---

* Sir William Macnaghten at page 103, Vol. I. of his work on the Hindoo Law, says:

"In former times, it was the practice to affiliate daughters, in default of male issue; but the practice is now forbidden;" and, as authority thereof, he quotes Colebrook's Note at page 376 of his Digest, Vol. 111.—That note, however, does not contain any prohibition of affiliating daughters, but it speaks only of the custom of this country to adopt sons in the Dattaka, and not in any other form. Thus: "In Goura, sons are only adopted in the (Dattaka) form discussed in the eighth section;"
faction of one's own conscience, the wise have openly declared virtue to be of these four descriptions."*(Ch. II. v. 12.)

\textbf{Vyavastha.} 502. In the present age, however, the adoption of the son given (Dattaka) only, is, for the householders, sanctioned by the usage of the good, as well as by law.

\textbf{Vyavastha.} 503. There being a practice amongst the devotees, who are not householders, of buying boys and maintaining them as \textit{kri\'ta} (purchased) sons or rather disciples, the latter inherit their property.†

* See ante, pp. 14, 15, Notes.

† Sir William Macnaghten says: "I have laid it down as a rule that, in the present age, adoption is allowable only in the Dattaka, Dvay\'a\'nashy\'a\'na, and Kritima forms; but I find, on reference to the Elements of Hindoo Law, that a question was agitated as to the admissibility of the Kri\'ta, or son bought. The point was much canvassed, and gave rise to a protracted controversy between two of the most eminent scholars of the day; and there is a case in the Sudder Dewanny Adawlut Reports, (Vol I. p. 28,) in which the claimant was alleged to be of the Patwarkhawa class; and in which all probability the claim would have been adjudged, had it been proved to be customary for sons of that description to succeed. Although, therefore, it may be asserted that, generally speaking, there are only three species of adoption allowable in the present age, yet the rule should be qualified by admitting an exception in favour of any particular usage which may be proved to have had immemorial existence. Thus it appears that the Goswamis, and other devotees who lead a life of celibacy, buy children to adopt them in the form termed Kri\'ta, or son bought; and that the practice of appointing brothers to raise up male issue to the deceased, impotent, or even absent husbands, still prevails in Orissa. (Note to Dig. Vol. III. p. 276.) The son so produced is termed Kshetrajja, or son of the wife; and doubtless these several sorts of subsidiary sons should be held entitled to the patrimony of their adopting fathers, in places where \textit{ex hoc} would justify the affiliation (See Note to S. D. A. R. Vol. II. p. 175.)—Marn. H. L. Vol. I. pp. 101, 102.

Here it should be remarked that the claimant in the above mentioned cause was alleged to be illegitimate, not Patwarkhawa, and there is much difference between these two. But as it may, both of them, as well as any other description of sons, would be valid if an immemorial custom of that kind have prevailed. As to the mention of the Goswami\'s and other devotees buying boys, it is to be remarked that they indeed buy boys and maintain them as sons or rather disciples, but nevertheless they do not adopt them, according to the law, as sons bought.—Such maintained sons become their heirs merely according to custom. Mr. Colebrooke's observation on this subject as contained in the Elements of Hindoo Law (page 103, Vol. II.) appears, therefore, to be quite correct. It is as follows:—"On this side of India, adoption by purchase is obsolete, and considered to have been prohibited in the present sinful age of the world: the only practice analogous to it is the purchase of children by Goswami\'s or Goswami&acirc;„, Sarayujja, and other professed ascetics, for initiation into their order of devotion, the disciple becoming the heir of the master. This however is not adoption, but a practice grounded on other provisions of the Hindoo law, and on the peculiar customs of the mendicant tribes.
SECTION IV.

WHO CAN, AND WHO CANNOT, ADOPT A SON.

Vyavastha. 504. Not only a married man with or without a wife, being destitute of a son, and (in the male line,) grandson, and son's grandson capable of performing the exequial rites, but also an unmarried man, can adopt a son.*

Authority. The Dattaka-mimansa, Sect. II. § 45. The Dattaka-chandriká, Sect. I. § 28.—See ante, p. 784 et seqne.

Remark. It should be here remarked, that no law is found expressing that a son shall not be adopted by one who has not contracted a marriage.—Coleb. Dig. Vol. III. p. 259.

Vyavastha. 505. A man who is not a householder (griihit) has also a right to adopt a son.†

Authority. I. The Dattaka-mimansa, Sect. II. § 45.—See ante, p. 784 et seqne.

II. It should not be argued that one, who has no wife, being (consequently) excluded from the order of a householder, cannot properly adopt a son, this being an act mentioned when treating of the order of a housekeeper or married man. There is no argument (to support such an induction.) Accordingly it is recorded in the Bhárala that Vyása and others, who had contracted no marriages, nevertheless obtained sons, namely, Súrá-deva and others. He who happens to have no wife, (whether he had contracted no marriage, or his wife has died or been forsaken by him,) either has not completed the ceremonies which perfect (twice born) men, or belongs to no order:

* The necessity of the thing applies, whether a man be single, married, or a widow; since to all, equally, his future state, according to his conception of it, is of the last importance. In general, it is in default of male issue that the right is exercised; issue here including a grandson and great grandson, (in the male line.)—Str. II. L. Vol. I. pp. 65,66.

The primary reason for the affiliation of a son, being the obligatory necessity of providing for the performance of the exequial rites, celebrated by a son, for his deceased father, on which the salvation of a Hindu is supposed to depend, it is necessary that the person proceeding to adopt, should be destitute of issue male, capable of performing those rites. By the term issue, the son's son, and a grandson (in the male line) are included.—Sutherland's Synopsis, p. 148. (See the notes in the following page.)

† See the section treating of marriage, ante, p. 654 Notes.

‡ See the first note of the next page.
but it is contrary to common sense that, although the form of adopting a son given have been observed, the adoption should be void.—Coleb. Dig. Vol. III. pp. 252, 253.

Vyavastha. 506. The impotent and the rest,* who, though incapable of inheriting, are capable of adopting.†

Authority. Although the eunuch and the rest should not marry, they may adopt children; such as sons given and the rest.—Coleb, Dig. Vol. III. p. 321.

* By the term "rest" are meant the outcast and his issue, a person born blind or deaf, one lame, a mad man, an idiot, one dumb, a person afflicted with leprosy or such other incurable disease. (See the following chapter, entitled "Exclusion from Inheritance.") Those of them, however, who are bereft of reason, are of course incapable of adopting.

† The Dautaka-chandrika, which in this respect is of paramount authority in Bengal, admits (though indirectly) the right of the impotent and the rest, who do not inherit, of adopting sons, but denies that the sons adopted by them have any right to inherit the estate of their paternal grandfathers, except to maintenance only.—See D. Ch. Sect. VI. § 1.

Adoption by one, being himself, through any of the operative causes, incapable of inheriting, seems to be of a qualified nature, not entitling the adopted to the full rights of his condition.—Sir, H. L. Vol. I. p. 65.

A doubt might be entertained, as to the validity of an adoption, by one not being in the order of the grihī (the householder or married man,) or by a blind, impotent, or other person, disqualified from inheriting. The more correct opinion, however, appears to be that an adoption by any of the persons described, would be valid: though it seems reasonable, that the affiliation, of one excluded from inheritance, should confer no right of succession on the adopted, of which the adopter is debarred by law.—Sutherland's Synopsis, p. 148.

Mr. Sutherland's remarks, on the subject of adoption by the impotent and the rest, as contained in Note IV appended to his Synopsis, are as follows: "The expression 'apastra'—desitute of male issue—occurring in the texts of Manu, cited as authorities for adoption, is explained, as intending, one whose son may have died, and one to whom no son may have been born.—The first explanation obviously, and the second by implication, may be construed as solely referring to the 'grihī' or married man.—Again, the Madhānti declares, that the scriptural precept enjoining the production of a son, must positively in some way be fulfilled by a person of the description noticed. These, however, do not appear sufficient grounds to pronounce the illegality of an adoption made generally by a man who may not have married, or still less one whose wife may have died. In fact, the passage in question of Madhānti may be regarded as merely enjoining the more obligatory necessity, for a married man, having no male issue, to adopt a son. Jagan-nātha, in the Visāda-chandrika, or the Digest translated by Mr. Colebrooke, expressly rejects as erroneous the doctrine, which would restrict adoption to a man in the order of grihī. The individuals excluded from inheritance are, "the impotent person, the
Authority. "But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorised, may take shares, provided they have no disability."*—Jágyavalkya.) On his text commentators remark, that two (descriptions of) sons of lepers and the rest, namely, one legally begotten, and one produced by a wife duly authorised, but not other sons, are capable of inheriting. This is not satisfactory: for the issue of an appointed daughter, the son given, and the rest, are faultless; and the offspring of the wife, and the son legally begotten, are not specially mentioned in the texts of Manu and the rest. It should not be argued, that no ground of preference exists whether the text of Manu

outcast and his issue, one lame, a mad man, an idiot, a blind man, a person afflicted with an incurable disease, and others similarly disqualified."—The admissibility of a doubt, as to the legality of an adoption by such persons, is suggested with reference to a passage in the Mitákshara, which declares, that, the specific mention of 'the legitimate son' and 'son of the wife' in a text of Jágyavalkya, providing for the inheritance of such sons of disqualified persons, is intended to forbid the adoption, by them, of other sons. The author of the Dattaka-chandrika likewise arguing from the same or a parallel text, that an adopted son is not ordained for disqualified persons, excludes such sons of those persons from succeeding to the estate of the paternal grandfather (D Ch. Sect. VI.) In the absence, however, of other authorities, those alluded to, can hardly be admitted as sufficient to establish a general rule vitiating in toto the adoption by one, excluded from inheritance.—In fact, the author of the Dattaka-chandrika, without advancing such position, merely denies the right of one so adopted to inherit of his adoptive grandfather, and perhaps no more was intended by the author of the Mitákshara.*

Of the above remarks, only this passage: 'that an adopted son is not ordained for disqualified persons,' does not seem to be accurate, as it differs from that of the Dattaka-chandrika alluded to by the gentleman himself, which is as follows: “As sons, blind, lame and so forth, do not inherit—and since it is ordained, that their legitimate son and son of the wife only, participate in the estate of the paternal grandfather, a son given, or other description of sons, adopted by such persons, have no right to the estate of the paternal grandfather, but maintenance only.” (D Ch. Sect. VI. § 1.) This can by no means be construed to mean that the author denied the adoption in the Dattaka and other forms of sons by blind men and the rest, as not ordained, but that recognising such adoptions by such persons he denied their heritable right in their adoptive grandfathers' estates, and allowed them maintenance only.

* On this, the author of the Mitákshara thus comments:—"The specific mention of legitimate issue and offspring of the wife, is intended to forbid the adoption of other sons." (See D. Ch. Sect. VI. Note 1.)—This exposition of the Mitákshara has been well refuted by the passage in the Viesa-bhangārmava already cited. More especially the adoption of the other descriptions of sons by impotent and the rest not being prohibited in the Dattaka-chandrika, must be taken not to have been prohibited, at least in this country.
shall be restricted as bearing the same import with the text of Jās-
 Nyāvalkya, or this shall be considered as exhibiting instances which 
elucidate the meaning of the other.—"Manu holds the first rank 
among legislators, because he has expressed in his code the (whole) 
sense of the Veda; no code is approved which contradicts the sense of 
any law promulgated by Manu." (Vr̥ihapāti)—Vivāda-bhāngārāṇa. 

Vyavastha. 507. A man afflicted with leprosy or such 
other sinful disease is, however, required to per-
form penance previous to his adopting a son.

Authority. Since he would not be capable of performing the 
religious rites, necessary on the occasion, unless the 
impurity or disability caused by such disease (which is the sign of 
crime) be removed by penance.* But to authorise his wife to adopt, 
he is not indispensably required to perform the penance in question, 
inasmuch as the act of authorising one’s own wife to adopt a son is 
equal to his begetting a son in her, and the law no where provides that 
a man afflicted with a sinful disease must perform the penance before 
his proceeding to do so.

Vyavastha. 508. The term ‘son’ comprehending also the 
son’s son and son’s grandson (in the male 
line,†)—he who is destitute of these, capable of performing the 
exequial rites and prolonging his lineage, can alone adopt 
a son, and not the person who has any of such issue in exist-
ence.‡

Authority. I. As for the instance, appearing, of the adoption as 
sons of Devārāṭa and the rest by Viṣhṇuṃtīka, and 
others, although possessing male issue: that, from its repugnancy to 
the revealed law, as contained in passages before quoted, must be un-
derstood not to imply the existence of a revelation (authorising the 

* See the chapter treating of exclusion from inheritance.
† See ante, p. 738, et seqv.
Authority. II. The word son is inclusive also of the son’s son, and grandson (in the male line,) for (through these) the exclusion from heaven, denounced in such passages as “Heaven awaits not one destitute of a son,” is removed: since it is declared in the text subjoined that the mansions of the happy are attained through the grandson and the other. “By a son, a man conquers the worlds: by a son’s son, he enjoys immortality: and afterwards by the son of a grandson (in the male line) he reaches the solar abode.” Nor can it be alleged that the adoption of a son (though a grandson and his son exist,) is for the sake of the funeral obsequies; for from this text it appears that the other two also are competent to perform such rites. “The son, son’s son, and the son of a grandson, (in the male line:) like these, the offspring of a brother,” &c. &c.—Ibid. § 13, 14.

Vyavastha. 509. A man though possessed of a son, grandson, or great-grandson (in the male line,) incapable of performing exequial rites, or prolonging his lineage, has a right to adopt a son.

Reason. Inasmuch as the object of adopting a son is the presentation of the oblations of food and libations of water, and the prolonging of one’s lineage.

Vyavastha. 510. The existence of a daughter’s son and the rest is no bar to the adoption of a son, or no ground to invalidate such adoption, if made.

* The remainder of this text is: “or that of a sapinda also, are born. Oh, king! capable of performing obsequies.”—Viṣṇu-purāṇa. See D. Mīm. Sect. II. § 60.

† The primary reason for the affiliation of a son, being the obligatory necessity of providing for the performance of the exequial rites, celebrated by a son, for his deceased father, on which the salvation of a Īśāna is supposed to depend, it is necessary that the person proceeding to adopt, should be destitute of male issue, capable of performing those rites. By the term issue, the son’s son and grandson (in the male line) are included. It may be inferred, that if such male issue, although existing, were disqualified, by any legal impediment, (such as loss of caste,) from performing the rites in question, the affiliation of a son might legally take place.—Synop. p. 148.

‡ It is required that the party adopting should be destitute of a son, son’s son, and son’s grandson (Sūryaka cited in D. Mīm.) It has been doubted by the author of the Considerations, (p. 150,) whether a man having a grandson by a daughter cannot adopt a son, but there is no solid foundation on which such a doubt can rest. It must have originated in the indiscriminate use of the word “grandson” in the English translations,
Since the word 'son' in the texts, "By a man destitute of a son, &c." (ante, pp. 738—740.) comprehends only the son, son's son, and son's grandson, in the male line, and no one else.

Vyavastha. 511. A man, having adopted a boy, and that boy being alive free from any legal defect, cannot adopt another.*

Reason. For the object of having a son being attained by the one already adopted, it is unnecessary to adopt another, and the adopter's being destitute of a son is the only criterion in the matter of adoption.

Authority. "By a man destitute of a son only, must the substitute for a son always be adopted: with some one resource, for the sake of funeral cake, water and solemn rites."(a)—Atri. D. Miss. Sect. I. § 3.

as applicable to the daughter's son as well as to the son's son. Mr. Sutherland, in his Synopsis, page 148, infers, and justly, that if male issue exist who are disqualified by any legal impediment (such as loss of caste) from the performance of exequial rites, the filiation of a son may legally take place. In the summary of Hindu Law p. 48, it is laid down as a rule, that the insanity of a begotten son would not justify adoption by the parent; but to this and other general positions laid down in that work I can not altogether assent. —Mack. H. L. Vol. I. pp. 66, 67.

* It is clear that a man, having adopted a boy, and that boy being alive, he cannot adopt another. It is written in the Dattaka-smansa: "A man destitute of a son (aputra) is one to whom no son has been born, or whose son has died; for a text of Sounaka expresses: 'one to whom no son has been born, or whose son has died, having fasted for a son, &c." And it has also been ruled that authority to a wife to adopt, in the event of disagreement between her and a son of the husband, then living, will not avail, though authority to adopt, in the event of that son's death, would be valid. —Ibid. pp. 80—86.

Sir Thomas Strange, however, says: "As there exists nothing to prevent two successive adoptions the first having failed, whether effected by a man himself, or by his widow or widows after his death, duly authorised, so, even where the first subsists, a second may take place, such having been the pleasure and will of the husband; upon the principle of many sons being desirable, that some one of them may travel to Goya;—a pilgrimage considered to be particularly efficacious, in forwarding departed spirits beyond their destined place of torture (Vol. I. p. 66.)

The latter part of this observation, namely, "so, even where the first subsists, a second may take place, such having been the pleasure and will of the husband,"—appears to be objectionable. In the first place, one adopted son being sufficient for the purpose, there is no necessity for adopting another substitute for the legitimately begotten son; secondly, the law has no where provided that during the existence of one son another may be adopted, on the contrary it has emphatically laid down that only that man who is destitute of male issue can adopt a son; thirdly, as soon as a man adopts a son he is father of male issue, and
The incompetency of one having male issue is signified by the term 'only' in this passage. D. Mim. Sect. I. § 6.

As to the principle of 'many sons being desirable that some one of them may travel to Gaya,' upon which such inference is drawn, it applies to sons, begotten and not adopted. See the cases of Gooroo-prosud and Roy versus Joymala, (S. D. A. Rep. Vol. I. p. 136.), alluded to by the learned compiler himself. Then as to the pleasure and will of the husband, the exercise of such pleasure or will of his seems to have been completely restrained by law; but it not been so, he, while having a son, would have been competent to adopt another on.

The observation of Sir William Macnaghten on the subject in question is correct and accurate. It is as follows:—"It is clear, that a man having adopted a boy and that boy being alive, he cannot adopt another. It is written in the Dattaka-mimamsa: 'A man destitute of a son (aputra) is one to whom no son has been born or one whose son has died, for a text of Suvaka expresses, 'One to whom no son has been born, or one whose son has died, having fasted for a son, &c." There is a Vyavastha maintaining the opposite doctrine, the authority cited for which is a verse ascribed to Manu, though not to be found in the Institutes:—"Many sons are to be desired, that some one of them may travel to Gaya.'—But this text obviously relates to legitimate sons. See the case of Gooroo prosud Roy versus Joymala, p. 136. Vol. I. Sudder Dewanny Adawlut Reports.—Manu. H. L. Vol. I. pp. 80—83.

Raghu-nandana, moreover, has cited the above text as being of the Natsya-patra and applicable to legitimate sons of the body. Again Jaganadh has cited the same text as contained in Sraddha-varsha's commentary on the Bhagavata without mentioning whose text it is. And the interpretation thereof given by Jaganadh is, that sons of various descriptions may be adopted by one who desires numerous offspring (See Colebrooke Dig. Vol. III. p. 295.) Thus the authenticity of the text in question is uncertain, and even according to Jaganadh's interpretation it does not apply to many sons of the description of Dattaka which is the only form of adoption used in the present (Kali) age, but to sons of the various descriptions (already mentioned). Hence, according to this text also, many Dattaka sons cannot be received in adoption.

Mr. Colebrooke observes, (in a note to S. D. A. Rep. Vol. I. p. 42) "that the validity of a second adoption, while another son, whether by birth or adoption is living, is a question on which writers of eminence have disagreed; that Jaganadh, in his Digest, inclines to hold it valid; but that the author of the Dattaka mimamsa, a work of great authority, maintains the contrary opinion."—To this it is to be added by way of conclusion that, as no writer of such eminence as that of the Dattaka-mimamsa or Dattaka chandrika has affirmed the validity of such adoption, (may, on the contrary, they have maintained the invalidity thereof,) the opinion of Jaganadh or any such writer cannot override the doctrine laid down in the Dattaka-mimamsa, a work of paramount and predominant authority on the subject of adoption, more especially when its doctrine is in exact conformity with the texts of the holy legislators—Manu and the rest, and the opinion of Jaganadh is quite contrary to them.
Vyavastha. 512. But, although a man, having a legitimate son of the body, or one adopted, or a son's son, or son's grandson (in the male line,) alive and competent to fulfil the object of having a son, cannot adopt another son, yet he can leave permission to his wife to adopt a son in case the male issue then existing or about be born die without leaving a son, (free from any of the legal defects. *)

"It is a disputed point," says Sir William Macnaghten, "whether a widow having with the sanction of her husband, adopted one son, and such son dying, she is at liberty to adopt another without having received a conditional permission to that effect from her husband. According to the Dattaka-résonash, the act would be clearly illegal; but Jagan-nátha holds that the second adoption in such case would be valid, the object of the first having been defeated." Although this doctrine of Jagan-nátha is not repugnant to the texts of the legislators, but is rather agreeable to the true intention of their laws, yet it ought to be received in its qualified sense, and accordingly acted upon, namely, if the husband's permission was expressly to adopt only one son, and no more, even in the event of that adopted son's dying without a son, then, notwithstanding the object of adoption would be defeated by his premature death, the widow could not adopt another, for the husband's permission is, above all, essential to the adoption by a widow, and it was his duty not to give such permission without providing for such contingency; so if, instead of so doing, he gave such restrictive permission, then he is in fault if the object of adoption be thus defeated.—But if the husband's permission was a general one, namely, to adopt and have a son without mention whether or not she could adopt another, in the event of the adopted son's dying without a son, then she seems to be warranted to adopt another in his stead, the meaning of her husband's permission in such case being that the object of having a begotten son must be fulfilled by the substitute for such son; so, one adopted son failing by death to fulfil that object, it is certainly implied that another substitute should be taken, in order that the obsequies of the husband and his forefathers may not cease and the celestial bliss be forfeited. In truth, when such adoption is not prohibited in the Datta-chandriká,

* It seems to be admitted, that a man having a legitimate son may not only authorize his wife to adopt a son, after his death, failing such legitimate son, but also, failing the son adopted, to adopt another in his stead.—Macra. H. L. Vol. I., pp. 83, 84.
and is sanctioned by the modern authority aforesaid, it may be held to be allowable in Bengal under the circumstances stated.

Vyavastha. 513. The husband can authorise his wife to adopt a son, only when he is unable himself to do so.*

Vyavastha. 514. A verbal authority to adopt is as valid as a written authority.†

Reason. Inasmuch as either of them, when satisfactorily proved, is sufficient for the purpose.

Vyavastha. 515. A writing is not also indispensably necessary for giving or receiving a son in adoption.‡

Reason. As the fact could be established by oral as well as documentary evidence.

Vyavastha. 516. A wife can adopt a son under the authority of her husband, and not otherwise.§

* It is natural for every person to expect an heir, so long as he has life and health; and hence it is usual for persons, when attacked by illness, and not before, to give authority to their wives to adopt.—Macc. H. L. Vol. I. pp. 99, 100.

† The authority to the widow need not be in writing, though it generally is so; as in prudence it ought to be, time and means existing. In the case of the Zemindar of Rajahbay, it was in writing; in another case (viz. Shām-chander versus Nārayan Deb) a verbal one for the purpose was held good by the Sudder Dewanny Adawlut of Bengal—Str. H. L. Vol. I. pp. 68, 69.

A written authority is doubtless not indispensable.—Colebrooke's Remark. See Str. H. L. Vol. II. p. 72.

‡ See Macc. H. L. Vol. II. pp. 176, 177.

§ As the husband's kindred may authorise the widow to make an adoption (See note to Kitābakd on Inh. Ch. I. Sect. XI. § 9,) wherever the authority of Vijaynāikhara, and Maykha, and works of the same school are followed, her son's sanction would no doubt be sufficient. It is otherwise in Bengal, where no sanction but the husband's can avail.—Colebrooke's remark opud Str. H. L. Vol. II. p. 72.

"According to the authorities which are followed in Bengal and Benares, a woman is competent, after the death of her husband, to adopt a son, provided he gave her permission to do so, during his lifetime.—It is a universal rule in Bengal and Benares, that a woman can neither adopt a son, nor give away her son in adoption, without the sanction of her husband previously obtained."—(Macc. H. L. Vol. I. pp. 90, 100.) The latter part of this rule, namely,—"nor give away her son, without the sanction of her husband previously obtained"—though it be a general rule, is not the law of Bengal, the Duttaka-chandrika having laid down a different rule.—See D. Ch. Sect. 1. § 31.
Authority. I. Let not a woman give, or receive, a son in adoption, unless with the assent of her lord.—Va-

II. If it is contended, then, that she may adopt a son, with the assent of the kinsmen even, it is wrong: for the term "husband" would become indefinite, and the purpose would not be attained. Now the purpose of the husband's sanction is that the filiation, as son of the husband, may be complete even by means of an adoption made by the wife.—D. Mīm. Sect. I. § 18.

Opinion of Baboo Prsunno Coomar Tagore on the subject of adoption by a widow.

The Hindoo law of adoption by a widow may be divided into the following five heads.—

1. The right of a widow to adopt. 2. The qualification of the person to be adopted. 3. The form necessary to be observed in adoption. 4. The effect of non-observance of the rules and necessary ceremonies. 5. The effect of adoption in due form.

I. The right of a widow to adopt.

The authorities of the Bengal school are unanimous that a widow cannot adopt without the sanction of her husband, either written or otherwise, formally expressed in his life-time. She is incapable in her own right to adopt an heir to her husband's estate. But when such sanction is left by her deceased husband, he in fact adopts the person through the delegated agency of his wife. When she adopts any person under such sanction, she in fact, in the capacity of an agent, carries into execution the instruction of the principal. She is therefore bound to see that the authority given to her for such act is valid, and that she has power to carry it into effect.

II. The qualification of the person to be adopted.

The person to be selected for adoption must be free from any disqualification, which might prevent him from fulfilling the purposes of his adoption. He must be of a certain age and must not be within a certain degree of relationship to the adopter. The ceremony of his tonsure must not have been performed, and so forth.
III. The form necessary to be observed in adoption.

The party intending to adopt should give notice of his intention to the ruling authorities, and proceed to the adoption in the presence of his kinsmen with the prescribed forms. But a widow not being capable of performing certain of the ceremonies, she is required to perform them through the agency of Brahmins. The disregard of any immaterial part of the ceremonies will not vitiates the adoption.

IV. The effect of non-observance of the rules and necessary ceremonies.

It is ordained that if a son be adopted without the observance of prescribed forms, his filial relation will not be established. But he will be entitled to funds sufficient to defray the expenses of his marriage. It is also stated that the ceremony of tonsure and other rites of initiation being indeed performed under his own family name, a son given and the rest may be considered as issue; else they are termed slaves. Hence it should be observed that a person adopted without observance of necessary ceremonies cannot be heir to the deceased proprietor. He will be duly entitled to his marriage expense and become a slave in the family. But there is a nice distinction in this matter. For every adoption has two conditions to make it invalid.—1st, If an adoption take place without authority from the husband.—2nd. If it take place under authority, but in violation of the rules and disregard of material ceremonies.

In respect to the 1st, if a widow adopt a person under an alleged authority from her husband and it prove to be unfounded, the acceptance of him as a son is ab initio invalid. If there be any other informality, which may vitiate either the gift of a son or the acceptance thereof, the effect will be the same, and the subsequent ceremonies duly performed will not cure the defect. The person in such case would continue the heir of his natural parents, and will not be entitled to the expense of his marriage, nor be a slave in the family, as it is mentioned, "When he who has procreated a son gives him to another, and that child is born again by the rites of initiation, his relation to the giver ceases, and a relation to the adopter commences." Hence, if a widow adopts a person without due authority from the husband, that child is not born again by the rites of initiation, and neither his relation to the giver ceases nor does a relation to the adopter commence, because the acceptance was not complete, in the absence of due authority.
In the 2nd case the circumstances are different; the person adopted is given by his natural parent, and received under due authority by the widow; the giving and receiving are complete, and thereby the right of one ceases and the right of another commences. Only the filial relation between the adopter and the adopted was not established, for want of the observance of the rules or performance of the necessary ceremonies of adoption. Under such circumstances, the filial relation to the natural parent having ceased by the giving and the accepting, while none having been established between the adopter and the adopted, the child cannot be regarded as a member of either family. The Śāstras, therefore, provide that he is entitled to his marriage expenses and is to be maintained as a slave in the family of the intending adopter.

Thus is explained the effect produced by the difference between the two conditions above mentioned.

V. The effect of adoption in due form.

The person legally adopted, with the observance of the rules and ceremonies, ceases to have any claim to the family or estate, or to perform the funeral rites, of his natural father. He not only inherits the estate of his adoptive father, but likewise lineally and collateral to the estates of the near and distant kinsmen of that person. He likewise represents the real legitimate son in relation to his adoptive mother and her ancestors become his maternal grandsires.

With reference to the remarks under the fourth head, the question arises whether a widow, having an alleged authority to adopt from her late husband, can bring a suit against him who would be regarded as his representative in the event of there being no adoption, for the establishment of her right to adopt under such authority. In a case in the Privy Council (Moore's Indian Appeals, Vol. III p. 359.) their lordships carefully avoided giving an opinion on a nearly similar point. But Mr. Macpherson, in his Civil Procedure, 3rd Edition, page 42, states that it was a question long undecided whether the civil courts had jurisdiction to entertain a suit which is brought, not for the enforcement of any civil right, but for the bare declaration of a right to perform certain religious ceremonies or indeed to decide on any right merely in the abstract. They have however latterly exercised such a
jurisdiction.—In support of this view, see Calcutta Sudder Dewanny Adawlut Decisions of 1853, page 58, and Agra Sudder Dewanny Adawlut Decisions of 1853, pages 679 and 761; and also Macnaghten’s Hindoo L. Vol. II page 199, Case No. 19, which is directly to the point.

P. C. Tagore.

Vyavastha. 517. A woman cannot, however, adopt a son under an illegal permission of her husband, or by putting a forced construction to his permission.*

Reason. Inasmuch as the adoption of a son would be invalid if made under a permission which the husband had no power to grant, or which was modified according to the exegency of the case or construed otherwise than what was intended by him.

Although the necessity for the adoption of a son to the adoptive father is obviated by the adoption of a single son capable of accomplishing the object of adoption, yet in this country it is customary for a man having more than one wife to authorise them each to adopt a son; she being under the necessity for adopting a son to offer the obligations of food and libations of water to herself and more especially to her departed ancestors, and the circumstance of the term “son” being used in the singular form in the texts of Manu and Atri (ante p. 738) not being calculated to be the criterion,† or prohibitory to the husband to have, if practicable, more than one son adopted at one and the same time. Such adoptions appear to be recognised in the subjoined passage of the Datta-tilaka, and owe their validity chiefly on the prevalent custom which is transcendent law, and supersedes the general maxims of the law, and which, as respects the matter in question, is too deeply rooted here to be shaken. Consequently,

---

* It has also been ruled that authority to a wife to adopt, in the event of a disagreement between her and a son of her husband then living, will not avail, though authority in the event of that son’s death would be valid.—Macn. H. L. Vol. I pp. 84—86. See the case of Mussummat Soolukkhuna versus Ram-doolal Pandey, S. D. A. R. Vol. I p. 325.

† Inasmuch as the texts in question are in poetry, and in poetry, words in the singular form are often, for the sake of the measure, used in the plural sense, and vice versa, as is evident from the following:—"Fathers desire male offspring (literally, 'sons') for their own sake, (reflecting) this son will redeem me from every debt whatsoever due to superior and inferior beings, therefore, a son begotten by him, should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment."—See Coleb. Dig. Vol. I. (Calcutta edition) p. 299.
VYAVASTHA-DARPANA: 767

Vyavastha. 518. The adoptions made by one's wives under his permission are valid provided they take place at one and the same time, otherwise, only the first is valid, and any subsequent adoption, unless made after the death of the first son, is invalid.*

Reason. Inasmuch as of the sons so adopted only the first was received when the husband was destitute of male issue, but he being the father of a son immediately after the first adoption, and his being destitute of male issue being the criterion in the matter of adoption, the law does not allow the adoption of another son while the first is alive† and is free from any legal defect.—See ante, pp. 738, 739 and 758.

Authority. I. "One cannot regulate according to his independent will."—By this maxim, if many sons even are adopted by one will and by one (i.e. simultaneous) performance of religious ceremonies, they are certainly valid; but not those adopted with ceremonies performed at different times, though the will (of adopting them) be one; and not even if the same be done under permission. Consequently, as sons simultaneously adopted at an earnest desire by the performance of the (prescribed) religious ceremonies are valid; so while there exists one (adopted son) free from defect, no other (is valid.) If out of regard to one's wives even many sons are adopted by one will and by the simultaneous performance of the religious ceremonies, they are good in law.—Dattaka-tilaka by Bhava-deva Bhatta.

II. It is not proper that a man who has one substitute for the legitimate son of the body, should make another substitute for the (same) son.—Datta-siddhanta-manjari.

* It is clear that a man having adopted a boy, and that boy being alive, he cannot adopt another.—Macn. H. L. Vol. 1 p. 80. See also the first note of the preceding page.

† In the case of Gourac-prosaud versus Joy-mala (S. D. A. R. Vol. I p. 136.) it appears that the husband, after adopting a son in conjunction with one of his wives, had confirmed his permission already given to another wife to adopt; and the adoption made
VYAVASTHA-DARPANA.

III. “By a man destitute of a son only.”] The incompetency of one having male issue is signified by the term ‘only’ in this passage.—D. Mím. Sect. I § 6 (See ante, pp. 759, 760.)

IV. He, who has no son, or grandson, or grandson’s son, or brother’s son, shall adopt a son; and while he has one adopted son, he shall not adopt a second.—Vivádárvana-setu.

Vyavastha: 519. Authorised by her husband to adopt a son, a woman may adopt at any time when a boy fit to be adopted is procurable.*

Reason. Since there is no period fixed by law within which a wife must adopt a son.*

Vyavastha: 520. But if a wife, authorised to adopt, do not adopt a son, not withstanding a boy fit to be adopted were to be had, then she becomes guilty of discontinuing the oblations of food and libations of water, and extinguishing the lineage.

There is on this subject a Vyavastha in Macnaghten’s work on the Hindoo Law, Vol. II, which is as follows:—

Q. A person, previously to his death, gave directions to his two wives that they should each accept a son in adoption. Subsequently

under such permission during the existence of the son already adopted was declared valid by the Sudder Court, though such adoption was by no means valid according to the Hindoo law. The decision declaring the validity of the above, was however, rejected by the Privy Council in a decision hereafter cited, which invalidates the adoption of a second son made during the existence of the first, and is in strict conformity with the law, and decisive in the point. See post. pp. 807, 808.

* See however the remark at page 783 and the case therein adverted to; see also Govindosmi-Soodapry Debra versus Jugodumuba Debra and others, at page 902.
to his death, his elder wife did not accept a son, and the two widows equally divided his estate. The elder widow made a gift of her whole share to a stranger, and died. Afterwards the younger widow received a boy in adoption. In this case, will the share of the elder widow go to the donee, or will it devolve on the adopted son of the younger widow?

R. The son adopted by the younger widow, with her husband's sanction, is entitled to the share of the elder widow, who infringed her husband's directions by omitting to make an adoption. The gift of the share which she received by participation with her rival wife is not legal, and the donee cannot take the property conveyed; because the adoption of a son is the only means in this case of preserving the obligations of food and libations of water at the funeral repast; and when she, without doing such benefit to her deceased husband, made the gift, she deserves to be ranked among those widows who are incompetent to succession. Consequently the gift by her is null and void.


**Remark.** The latter part of the above opinion, namely, "when she, without doing such benefit to her deceased husband, made a gift, she does not deserve to be ranked among those widows who are competent to succession," does not appear to be consistent with the law; inasmuch as no crime which does not cause degradation can render a person incompetent to succession. Degradation is caused by one of the five atrocious crimes or by sins of the second or third degree committed over and over.* But the act of omitting to adopt a son, or in other words, of discontinuing the presentation of the obligations of food and libations of water, is neither one of those five atrocious crimes, nor a sin of the second or third degree;* consequently, it can not render a woman incompetent to succession.—The opinion in question is not therefore warranted by law.

**Vyavastha.** 521. A wife even when an infant may adopt a son under the authority of her husband.

**Reason.** As in doing so she only executes her husband's order, the husband being in effect the doer of that act.

---

* See the Chapter treating of Exclusion from inheritance.
REM. It has been decided that a wife, while an infant, can adopt a son under her husband's authority; but the question, whether a husband can during his minority adopt or authorise to adopt a son, remains still undecided.

"Pandit Bharat-chander Shiromani, the writer of commentaries on the Dattaka-mimánsa and Dattaka-chandriká, says in his Synopsis to the Dattaka-mimánsa, that "both male and female infants may adopt sons, infancy not being a bar to the performance of religious rites."

Baboo Pronunno-coomar Tagore, author of the Gouriya Dáyátálí, &c. is however of opinion that a minor is incompetent to adopt a son.—The opinion written by him on the subject is as follows:

"The corresponding terms in Sanskrit for 'major' and 'minor' are 'Prápta-vyavahára,' or one who has attained discretion, and 'aprápta-vyavahára,' one who has not attained discretion. The word 'vyavahára' is defined as follows by Udayanákaráchárya, a commentator on Gouma Sutra. There are five causes which lead to 'vyavahára' or discretion. 1st. Knowledge of one's qualification for a proposed work. 2nd. Perception of possible advantage from it. 3rd. Reflection of great possible disadvantage from it. 4th. Desire for the work. 5th. Knowledge of the means of effecting it. The shastras determine that a youth who has not attained sixteen years of age cannot possess discretion as above defined. The Mitákhárayá in the Chapter on Loans states that a child from birth to the age of eight is to be considered as yet in the womb, and till the age of sixteen he is to be termed a boy; after that age he arrives at the years of discretion, and is recognised as a major. If he has no parents, he is then to be considered as no longer in a state of dependence (so says Kátyáyana)."

"The author of the Mitákhárayá observes that, if a boy have no parents, he, though independent, should not be personally liable for the debts of his father, for Kátyáyana has said that, though a boy have no parents and in consequence be free from dependence, yet he is not to be responsible for his paternal debts, because, independence is vested in the eldest, that is, in him who has attained age and qualification as before described. Before majority, no boy is liable to be summoned to any Court or to be imprisoned, just as he is not liable for debts.
For it is said, they who have not attained discretion, ambassadors, persons about to give gifts for the sake of religion, persons engaged in religious ceremonies, and persons who are advanced in years, are not to be summoned to any Court or imprisoned. There is an apparent inconsistency of opinion between the sage before quoted and another sage who declared that a son from his birth is bound to pay his paternal debts, even from his own resources, to preserve his father from perdition, while that sage says that he becomes responsible only after attaining years of discretion. The meaning of the sage alluded to is that the son is bound to pay such debts after arriving at majority and not before. But the restriction as to the payment of debts till attaining majority is not applicable to the performance of the obsequies of ancestors, which even a boy is enjoined to perform."

"From the above it will appear that, before attaining majority, every act whether worldly or religious is prohibited, except the performance of obsequies, or of the like nature, which is especially enjoined by the Shástras and not optional. Now the authority of a minor to his wife for the adoption of a son will come under the class of restrictions. 1st. He has not arrived at the age of discretion determined by the Shástras, and therefore cannot possess the qualifications required for such an act. 2ndly. Adoption is not enjoined by the Shástras as "Nitya," or enjoined, but "Kámya," or optional, as it is said that he, who desires the funeral cake, libations, and solemn rites, and the celebrity of his name, is required to adopt a son. But by the omission of adoption he incurs no sin, he only deprives himself of certain advantages: and therefore adoption is not a "Nitya," but a "Kámya" act: as such, like all other acts of a like nature, it rests in the desire of the party and is not enjoined by the Shástras. Adoption by a minor, is invalid, since he cannot possess discretion as already defined. Any authority of the kind given by a minor, like any testamentary writing or verbal bequest made by him, is invalid, according to the Hindoo law.—This doctrine is likewise consistent with reason, because adoption in general deprives the legal heir of his rights, and a person who is capable of doing that should be qualified to perform the acts specified in the definition of discretion. That discretion being unattainable, according to the Shástras, by persons under the age of sixteen, the restriction must be applied to all acts of a minor which he is not specially allowed to perform. Besides, as the judgment of a
minor must be immature. any such power on his part is obviously liable to the greatest abuses, through the influence of interested and designing parties. It has therefore been the policy of the Hindoo Legislators most strictly to forbid the recognition of any power in a minor where discretion is necessary to the validity of an act. This policy is consonant with the opinion of foreign jurists."

The civil Roman law attached such weight to so important an alteration in families, as adoption, and so zealously watched such acts, that it provided that no adoption should take place without the authority of the magistrate. The intention of such restriction evidently was to control such alteration in the line of inheritance in a family to the prejudice of others. This principle in a great measure coincides with that of the Hinoo Legislative Sages, who ordain that a person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and announced his intention to the king, &c."

Remark. It appears on consideration of the two opinions above mentioned, that Pandit Bharul-chander Shireman, considering the adoption of a son to be a positive act of religion, held that an infant is competent to adopt; while Babou Pronunno-coomar Tagore, considering that the order of succession would be changed, and the person, who would have been an heir, if adoption did not take place, would be deprived of his rights by the act of adopting a son, considering also that act to be an optional one, held it to be beyond the capacity of a minor. But it is unquestionable that adoption is a religious rite mixed with civil functions; for, had a boy been adopted merely for the sake of the oblation cake, water, and solemn rites, his adoption might have been deemed a mere religious act, but he is adopted not only for those purposes, but also to inherit the adopter's estate, and to be his representative in all civil matters. Thus there is no doubt that adoption is partly for religious and partly for civil purposes. Now, it is to be seen whether it is an optional or positive religious act.—If optional, an infant cannot do it, even though it did not partake of a civil nature. But it appears from the following text of the Veda: "A Brāhmaṇa, immediately on being born, is pronounced a debtor on three obligations,—to the holy saints, for the practice of religious duties; to the gods for the per-
formance of sacrifices; to his forefathers for offspring;” also from the following text of Manu: “When he has paid his three debts (to the sages, the manes, and the gods,) let him apply his mind to final beatitude; but low shall he fall, who presumes to seek beatitude, without having discharged those debts;” also from the following text of the same sage cited in the Dattaka-chandrikā: “A son of any description must be anxiously adopted by a man destitute of male issue; for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name;” and also from the following passage of the Dattaka-mimónsa: “Since it is shown by this, that being so destitute is a cause, in omitting to adopt a son, an offence even is incurred;” that the adopting of a son is a positive act; and from this special dictum of the latter authority: “the precept enjoining the production of a son being positive, it results that the contravention of it is the cause of an offence; and on defect of any son in general, exclusion from heaven is declared in this text: “heaven awaits not one destitute of a son:” &c.,—adoption in his opinion is certainly a positive religious act (nitya dharma karma,) and not an optional (kāmya) one, inasmuch as, any religious act the non-observance or non-performance whereof causes an offence is termed ‘nitya karma’ (positive act.) Further on, the Dattaka-mimónsa, having declared that the precept enjoying the production of a son is a positive act, and the contravention of it is the cause of an offence, and there being nothing contrary to it in the Dattaka-chandrikā, the opinion of the former must be respected, even though according to other authority or authorities the act in question be an optional one, the Dattaka-mimónsa and Dattaka-chandrikā being the highest and predominant authorities on the subject of adoption. But though adoption be a positive act of religion, and as such, it be incombent upon persons destitute of sons to adopt, yet consistently with the reason of the law an infant without discretion is incompetent to adopt a son; for how can that boy do so who does not understand why a son is to be adopted, and what is the consequence of not adopting a son? In the Prāyashchittha-kānda distinction is made with regard to severity in the penance or expiation of infants, according to their age and understanding. In the Vyavahāra-kānda* too, an infant (shishu) before his eighth year is considered as similar to a child in the womb,† and to the tenth year a (mere) child,†

* See the preface p. I, † See ante pp. 396, 397.
infants should be entitled to maintenance only, since it is the general
maxim of the law that—"the sense of the law ascertained in one
instance, is applicable to others also, provided there be no imped-
iment."* The circumstances of an infant and his adopted son being
similar to those of eunuchs and the like and their adopted sons, there
is no impediment to the rule, laid down for the latter, being applied
to the adopted sons of infants.†—Consequently, when a son is adopt-
ed by a minor, endowed with discretion, that son should be entitled
to maintenance according to the rule of the Dattaka-chandriká.

Legal opinions delivered in, and admitted by, the several courts
of judicature, and examined and approved of by
Sir William Macnaghten.

Q. Is an unmarried person competent to adopt a boy as his son,
or otherwise?

R. An unmarried person may, for the purpose of
securing for his own and his ancestors, funeral obli-
gations of food and water, adopt a boy.

This is consonant to the Dattaka-chandriká, Dattaka-darpana, and
Vol. II. Ch. VI. Case 1. p. 175.

Q. L. Is a woman, on the death of her husband, competent to
adopt a son or not?

R. L. If her husband left directions with her to
adopt a boy, and then died, in that case the widow
is authorised by law to receive a son in adoption,
but not otherwise.

Authorities.—The text of Vashishta, cited in the Viráda-chintá-
mani and Viráda-bhangáravana :-

"Let not a woman either give or receive a son in adoption, unless
with the assent of her husband."

* See Sri-krishna's commentary on the Dāya-bhāga, Sana, pp. 81, 82. Coleb. Dā.
Bhāg, p. 69. Note 31. ante, p. 436.
† That is, as eunuchs and the like, being themselves not entitled to their patrimony,
cannot make their adopted sons entitled to such property, so an infant not having power
to dispose of property, cannot make his adopted son successor to property.
Q. 2. A person died before his father, leaving a widow in a state of pregnancy, who was subsequently delivered of a child. In this case, is the posthumous child entitled to its father's property?

R. 2. If the son leaving a pregnant wife died before his father, while the family were in a state of union, and the widow subsequently brought forth a son, such son, on the death of his grandfather, is entitled to inherit his father's portion along with his uncles or other heirs; but if the widow bring forth a daughter, she cannot claim a share, because there is no provision in the law that a granddaughter, whose father's death happened previously to that of his father, may inherit from her grandfather. But supposing the original proprietor to have divided his estate between himself and his deceased son, in that case the granddaughter is competent to inherit her father's share.

Authorities:—The text of Kātyāyana, cited in the Dāya-lata:va: "Should a son die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather. That son's son shall receive his father's share from his uncle, or from his uncle's son."

Q. 3. Is it customary to enter into any written agreement on the occasion of adopting a boy; and if so, is an adoption in which no writing was executed necessarily null and void?

R. 3. There is no law requiring the execution of a written instrument on the occasion of receiving a boy in adoption, though the practice of resorting to writing is prevalent. If a person, having performed the ceremonies prescribed for adoption, affiliate a boy whose age does not exceed five years, without having recourse to any written instrument, and the parents of the boy, of their own free will, give the boy for the purpose of affiliation, in such case the adoption is good and legal.

The Passage quoted in the Vivādārṇava-setu and Vivādabhāṅgā, saha:—"But after their fifth year, O king, sons given and the rest must not be adopted: let the adopter take a boy five years old, and first perform a sacrifice for male offspring."

98

**Q.** A person previously to his death left directions with his wife, who was then under age, to adopt a son for him while his brothers were alive. In this case, was he at liberty to desire his wife to adopt a son, though his brothers were living?

**A.** A widow being a minor may adopt a son under instructions from her late husband, though her husband's brothers are living.

**R.** If the deceased, previously to his death, and during the lifetime of his brothers, left directions with his wife to accept a son in adoption, and subsequently died, on his death, the directions so given should be considered legal for the purpose of affiliation. The non-age of his widow and the existence of his brothers are, according to law, no obstacle to the adoption. This opinion is conformable to the doctrines of *Manu*, the *Vyavahāra-tatvā*, the *Dattaka-mimāṃsa*, and other law books. City Moorshecdabad. March 19th., 1815. *Haradhan Roy*, agent of *Sarbamongula*, versus *Bimowath Roy* and others. Macn. H. L. Vol. II. Chap. VI. Case 5. p. 180.

**Q.** A person, having left directions with his wife to make an adoption, died, and, subsequently, his widow, at one and the same time, adopted two sons; in this case, is the adoption of both, or either, good and valid?

**A.** A widow, having received instructions from her husband to adopt a son, cannot make two adoptions at the same time. The one made secondly will be invalid.

**R.** If a childless person, from religious motives, desire his wife to adopt a son, the child so adopted becomes the substitute of a legitimate son. The widow is with such permission competent to adopt. From the direction of the husband, as it is stated in the question, he evidently considered that one substituted son would be sufficient for the performance of religious ceremonies. Consequently, in obedience to each order, the widow cannot adopt two sons at the same time; and the second adoption is illegal.

**Authorities:**—“A son of any description must be anxiously adopted by one who has none, for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name.”
the text, the word 'son' is in the singular number; the author; Drdotanirnaya construes this as forbidding many adoptions, &c. 7: "Sages declared these eleven sons, (the son of the wife and st,) as specified, to be substitutes for the real legitimate son; the obsequies would fail, (Kriyālopāt.)" Dacca Court of Appeal, 30th., 1813. Macn. H. L. Vol. II. Ch. VI. Case 7. pp. 181, 182.

1. If a woman, asserting that she had received permission her husband to adopt a son, shall make such adoption, and the ing of the permission be not supported by any other evidence as her assertion, is the adoption legal?

R. 1. If the woman state herself to have been authorised by her husband to adopt a boy, and the sanction be not proved by the testimony of wit- nesses or other evidence, the adoption in such case is not legal.

authority:—"Let not a woman either give or receive a son in ion; unless with the assent of her husband." VASHISHTHA, cited in Daulaka-chandrikā and other authorities.

2. If a dispute arise between an adopted son and his adopting er, and, to decide it, the adopted son execute an agreement to allowing purport, that his mother is to remain in possession of unded property during her lifetime, and that he is to inherit after y on the following condition, that, should any serious difference between his mother and himself, he is to lose all his rights, is adoption is to be held void; does such document, on the oc- ce of any difference between them, confer a legal right on the er to disinherit the adopted son?

2. Under the circumstances stated, such agreement does r the right alluded to on the mother, because the owner of any ssions may dispose of them as he pleases. This opinion is confor-le to the Dōya-bhāga, Vivāda-bhangārṇava, Vivādārṇava-setu, and tracts.

authority:—The text of NĀRADA cited in the above authorities; uild they give or sell their own shares, they do all that as they s, for they are masters of their own wealth."
Q. A man of the first class while afflicted with leprosy, adopted a son. In this case is the adoption good and valid?

R. A person afflicted with leprosy, is incompetent to adopt a son; for he bears the impurity till death: consequently the adoption must be considered as void. *—Ibid. Case 20, p. 201.

Q. A person having been afflicted with leprosy, or the like disease performs the expiation (práyashchitta) ordained in the law for it, and adopts a boy as his son. In this case, is the adoption good and legal or otherwise?

R. The person afflicted with leprosy or the like disease, after his performance of the prescribed penance, becomes purified, and is competent to perform párvuṇa, or double rites and ceremonies, as declared in the Veda, therefore the adoption made by the person so purified is good and legal. †—Ibid. Case 21, p. 201.

Case Digumbarree Debee against the other widows of Lakkhyee-narain Tagore, cited at pages from 166—174 of the Considerations on the Hindoo law, and also in this book under the head “Who can, and who cannot be adopted.” q. v.

* It is not distinctly stated in this case whether the leper performed the prescribed expiation. Certainly the opinion is correct, provided the leper have not performed expiation; but if performed, the adoption is legal, for the impurity of the leper is removed after penance performed. See the following case.—Note by Sir W. Macnaghten.

† The opinion is correct, but the law officer by whom it was delivered has omitted to support it by any authority. The following passage from the Digest of Jagannatha may serve to supply the omission. “Baghu-nandana holds that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the Veda. By parity of reasoning, he becomes competent to inherit property, as well as to perform religious ceremonies.”
REMARK. In this case it will be seen that one Lukkhyee-narain Tagore died, leaving three widows, one of whom was enciente at his death, and in the event of the death of the child about to be born, he empowered his widows to adopt another son. In due time the pregnant widow was delivered of a son, but he died seventeen days afterwards. And upon that event his mother filed a bill in equity, as heir to her deceased son, to be put in possession of the estate of her husband, Lukkhyee-narain. Eventually, however, the power to adopt, and the adoption made under that power, were affirmed, and the bill of the widow, who, but for the adoption, would have come in as her son’s heir, was dismissed. There could be no doubt of the devolution of the absolute estate on Lukkhyee-narain’s begotten son, but him failing, the title of the adopted son became paramount in next succession.

Case

Shám-chander and Rooter-chander appellants, versus Narayanne Debee and Rám-kishore Roy Respondents.


REMARK. The particulars of this case will be found under the head "whether a Datta-son is entitled to inherit from a banana," q.v. Although the decision in the above case went directly on a different point, that is the validity of two successive adoptions made for the same man, one son being adopted on the death of the other, yet it will be found on perusal of the decision that the adoption of Rám-kishore made by Ruttun-mala the younger widow of Hurray-kishore on the death of his first adopted son Nund-kishore a long time after the date of the permission or power given for the purpose was unanimously declared valid by the then Hindoo law officers, and it was held to be so by Mr. H. Colebrooke, the highest European authority on matters of Hindoo law, without any objection on the score of the execution of the power to adopt being barred by lapse of time.

Case

This was an action of ejectment, brought by the two daughters of A. B., a deceased proprietor of the property in question, to recover the premises as set out on a bill of particulars as having belonged to their father.

To complete the plaintiff's case a question was asked of the pandits.
Quere, A man dies leaving landed property, a widow, and three daughters, but no male issue; one of those daughters has a son born during her father's life time. Quere, who is entitled to possession at the father's death?

A. The widow is entitled to an estate for life, and after her death the unmarried daughters have equal shares: the daughter that is married in her father's life time is not entitled to any. If one daughter had been married, and the other not, at the father's death, no inter-\-vention of the widow's estate having occurred, the unmarried daugh-\-ter would have succeeded solely.

Fergusson, for the defendant, stated that his client claimed, as the adopted son and heir of the deceased A. B., and it was proved that he had been so adopted by the widow of A. B., after his death accord-\-ing to instructions given to her for this purpose by him during his life time.

And several witnesses swore to having heard A. B. invest his wife with a power to appoint him (defendant) an adopted son after his death.

The following questions were here put to the Pandits.

1st. Whether any written authority was necessary to be given by the husband, to entitle his widow to adopt?

A. No.

2ndly. Are any ceremonies usual on such occasion of deputing?

A. No, it may be merely verbal; but if there were no other wit-\-ness of the widow's having received such a power from her husband but the widow herself, she would not be believed, and could not prove it.

3rdly. Whether, if there be living a son of the deceased's daught-\-er at the time of his death, any other can be adopted?

A. Yes, any stranger even, without restriction.

Thus the power of the widow to adopt, as she had done, a stranger after her husband's death, by virtue of a general power being establish-\-ed, and the fact of adoption being proved, there remained only a few questions more of Hindoo law to put the lessors of plaintiff out of Court.
Here the following question was asked of the Pandits:—

Q. May such a power of adoption, delegated to the widow, be exercised at any time after her husband's death?

A. Yes, so it be in the widow's lifetime.

This adoption had been made fifteen years after her husband's death, so that the widow enjoyed the property solely for some time; but since the defendant had come to the age of sixteen she had given it up entirely to his management and benefit, which was strong corroboration of the truth of the defendant's case, because the widow herself had actually, by the adoption, deprived herself of a life estate, which she would otherwise have had in the whole premises.

There had not been any quarrel with the daughters.

It was also inquired of the Pandits whether a widow could adopt a child which was not in existence in her husband's lifetime?

A. Yes.

In the case of the Rajah of Tanjore, quoted by Ferguson, there was also a parol adoptive power, and this was authenticated and clearly established as law by all the Pandits of any distinction in India.

The facts of the case and the law being clearly established, the Court gave judgment for the defendant.—East's Notes, Case No. X. 24th of March, 1814.

Remark.—

The above decisions are consistent with the Hindoo law, which prescribes no limitation in adoption. The Privy Council, however, in the following case, has determined that the power given by a man to his wife to adopt a son in the event of his begotten son, then alive, dying without issue male, becomes incapable of execution by reason of the begotten son's living to the age of majority, and then dying leaving a widow him surviving.

Bhoobun-moyee Debeah *versus* Ramkiashore Acharjea*

The 26th of May, 1865.

*Present*—LORD KINGSDOWN, LORD JUSTICE KNIGHT BRUCE, LORD JUSTICE TURNER, SIR LAWRENCE PEEL (and) SIR JAMES W. COLVILLE.

**Case**

The appeal in this case arises out of a suit brought by the respondent Ram-kiashore to recover certain estates in Bengal which were claimed by, and were in the possession of, the appellant and of Rajendro-kiashore, whom she alleged to be her adopted son.

The facts, so far as they are necessary to make our judgment intelligible, are these:—

Gour-kiashore Acharjea, being the owner of considerable estates in Bengal, died in the year 1821. He left surviving him a widow named Chundrabally and an only son named Bhowanny-kiashore. At the time of his father's death, Bhowanny, who succeeded as his heir, was about four years of age. He attained, however, his majority and married the appellant, Bhoobun Debeah. He died in the month of August 1840, being then about 24 years old. He left no issue, and Bhoobun Debeah, his widow, became the heir of his property as well ancestral as of other estates, which had been purchased with his own money during his life. Immediately upon the death of Bhowanny an instrument was set up as being his will by Chundrabally, his mother, and Bhoobun Debeah, his widow. By this instrument power to adopt a son was given to Bhoobun Debeah, and until such adoption was made the income of the estates was given to Chundrabally and Bhoobun Debeah.

Under this alleged will these two ladies took possession of the estates of Bhowanny and remained in the enjoyment of them for nearly four years.

In December 1843 Bhoobun Debeah professed to exercise the power alleged to have been given to her by the instrument already referred to, and adopted a boy called Rajendro-kiashore. Upon this a quarrel appears to have arisen between Chundrabally and Bhoobun, and Chundrabally alleged that the supposed will of Bhowanny, under which she had so long been in the enjoyment of half his property, was a forgery, and had not been made till after his death, and that Bhoobun had no power of adoption. She further set up an instrument

---

* See Weekly Reporter, Vol. III, p. 16 (Privy Council.)
called an Onoomuttee-putter or deed of permission, by which she alleged that a power to adopt a son had been given to her by her husband Gour-kishore in his life-time, and which power, in the events which had happened, she claimed a right to exercise. She accordingly adopted, or professed to adopt, the appellant Ram-kishore as the son of Gour her late husband.

Bhoobun Debeah on behalf of Rajendro-kishore, her adopted son, having obtained possession of all the property of Bhowanny, the suit in which the present appeal is brought was instituted in 1852 in the Zillah Court of Mymensing by a next friend of Ram-kishore, on his behalf, against Bhoobun Debea and Rajendro-kishore, and certain other persons, the plaintiff claiming as the adopted son of Gour the whole property ancestral and acquired of Bhowanny. To this suit Chundra-bully was made defendant instead of suing as a plaintiff on behalf of her son.

When the case came before the Sudder Ameen he was of opinion that the plaintiff must recover upon the strength of his own title, and that if such title failed it was unnecessary to decide upon the case of the defendants.

He was of opinion that the plaintiff had failed to prove his title, and he, therefore, dismissed the suit expressing at the same time a strong opinion in favour of the defendant’s adoption. He awarded the costs of the suit to the defendants with the exception of Chundra-bully, whom he held to be really the promoter of the suit. From this decision there was an appeal to the Sudder Dewanny of Calcutta. The case was heard upon several different occasions. Finally, the Judges were unanimously of opinion that the adoption of Rajendro was invalid, and that the Will of Bhowanny purporting to create the power of adoption was a forgery. They were equally unanimous in holding that the Onoomuttee-putter of Gour-kishore was a genuine and valid instrument, and that if the power to adopt continued at the time when Chundrabully professed to execute it, there had been a valid adoption. One of the Judges was of opinion that the power was gone, and that the adoption was invalid. The other two were of opinion that the power existed at the time of the adoption, and a decree was made, therefore, in favour of the plaintiff as to the ancestral property of Bhowanny, but not as to his self-acquired property, and the costs of the
parties were ordered "to be borne by them in proportion to the amount of the property decreed or dismissed." The case now comes before us on appeal by Bhoobun Deba, as representing her own rights and the rights of a son, whom she had adopted in lieu of Rajendro, who is dead, and on a cross appeal by Ram-kishore complaining that the decree in his favour ought to have included the self-acquired property as well as the ancestral property of Bhowanny.

On the hearing of these appeals we expressed a clear opinion, without calling on the Respondent's Counsel, that the court below was right in holding that the alleged will of Bhowanny was a forgery. This being so and no power of adoption having been proved or alleged to have been given by parole, the adoption of Rajendro and of the son now substituted for him must of course be held in this suit to be invalid.

The next question is as to the validity of the adoption of Ram-kishore. We see no reason to dissent from the opinion of the court below upon the facts of the case, viz., that the Onoomattee-putter of Gour is a genuine instrument, and that, supposing the powers given by it to have been in force, when the adoption under it took place, the adoption was good, but we think it unnecessary to examine into the genuineness of this instrument, as we are of opinion that at the time when Chundrabully professed to exercise it, the power was incapable of execution.

It appears that some years before the birth of Bhowanny, and in the year 1811 of our era, Gour-kishore being then childless, and anxious, as Hindoos generally are, to provide a son by adoption, if he should have no natural born son, executed an Onoomuttee-putter on the 30th March 1811 by which he gave power of adoption to Chundrabully, his wife.

In 1819, two years after the birth of Bhowanny, he executed the instrument on which the present question depends, which is found at page 51 of the appendix, and the important part of which is as follows.—

"This is an Onoomattee-putter (deed of permission) to the following purport:—Prior to the birth of a male child from your womb, I had executed in your favour an Onoomuttee-putter on the subject of
your receiving (an) adopted son. Subsequently by the will of God, you have given birth to a male child. Still, having regard to the future, I have again given you permission. If, which God forbid, the male child of your body be non-existent, then you will adopt a son from my race (gotra,) or from a different race (gotra,) for the purpose of performing mine and your Sradh and other rites, and for the Sheva (service) of the Gods, and for the succession to the zemindary and other property; on which, if the adopted son be non-existent, which God forbid, then you shall, according to your pleasure, on the failure of one, adopt other sons in succession, to avoid the extinction of the pinda (funeral cake or offering;) that Dattaka (adopted) son shall be entitled to perform your and my Sradh, &c., and that of our ancestors, and also to succeed to the property."

The first question which arises is as to the construction of the instrument. It seems to have been considered by the two Judges of the Sudder Court, who decided in favour of the respondent (certainly by one of them,) that the document was to be regarded as a will, and as containing a limitation, on failure of male issue of the testator in the life time of Chundrabully, of the estate of the testator, to a son adopted by Chundrabully, as a persona designata. There is no doubt that by the decision of Courts of Justice, the testamentary power of disposition by Hindoos has been established within the presidency of Bengal, but it would be to apply a very false and mischievous principle if it were held that the nature and extent of such power can be governed by any analogy to the law of England.

But their Lordships are quite satisfied that there is in this case no room for the application of any such doctrines. The instrument before us is merely what it purports to be a deed of permission to adopt; it is not of a testamentary character, it was registered as a deed in the life time of the maker; it contains no words of devise nor was it the intention of the maker, that it should contain any disposition of his estate, except so far as such disposition might result from the adoption of a son under it. He mentions the objects which induced him to make the deed,—religious motives, the perpetuation of his family, and the succession to his property, but it was by the adoption, and only by the adoption, that those objects were to be secured, and only to the extent in which the adoption could secure them.
How, then, is the deed to be construed when we regard it merely as a deed of permission to adopt? What is the intention to be collected from it, and how far will the law permit such intention to be effected? It must be admitted, that it contemplates the possibility of more than one adoption; that it shows a strong desire on the part of the maker for the continuance of a person to perform his funeral rites, and to succeed to his property, and that it does not in express terms assign any limits to the period within which the adoption may be made. But it is plain that some limits must be assigned. It might well have been that Bhowanny had left a son natural born or adopted, and that such son had died himself leaving a son, and that such son had attained his majority in the life time of Chundrabully. It could hardly have been intended that after the lapse of several successive heirs a son should be adopted to the great grandfather of the last taker when all the spiritual purposes of a son, according to the largest construction of them, would have been satisfied.—But whatever may have been the intention, would the law allow it to be effected? We rather understand the judges below to have been of opinion that if Bhowanny had left a son, or if a son had been lawfully adopted to him by his wife under a power legally conferred upon her, the power of adoption given to Chundrabully would have been at an end. But it is difficult to see what reasons could be assigned for such a result which would not equally apply to the case before us.

In this case Bhowanny had lived to an age which enabled him to perform, and it is to be presumed, that he had performed, all the religious services which a son could perform for a father. He had succeeded to the ancestral property as heir, he had full power of disposition over it, he might have alienated it, he might have adopted a son to succeed to it, if he had no male issue of his body. He could have defeated every intention which his father entertained with respect to the property.

On the death of Bhowanny his wife succeeded as heir to him, and would have equally succeeded in that character in exclusion of his brothers, if he had had any. She took a vested estate as his widow in the whole of his property. It would be singular if a brother of Bhowanny, made such by adoption, could take from his widow the whole of his property, when a natural born brother could have taken
no part. If Ram-kishore is to take any of the ancestral property he must take all he takes by substitution for the natural born son and not jointly with him.

Whether under his testamentary power of disposition Gour-kishore could have restricted the interest of Bhowanny in his estate to a life interest, or could have limited it over (if his son left no issue male, or such issue made failed) to an adopted son of his own, it is not necessary to consider; it is sufficient to say that he has neither done nor attempted to do this. The question is that whether the estate of his son being unlimited, and that son having married and left a widow his heir, and that heir having acquired a vested estate in her husband's property as widow, a new heir can be substituted by adoption who is to defeat that estate, and take as an adopted son, what a legitimate son of Gour-kishore would not have taken. This seems contrary to all reasons and to all the principles of Hindoo law, as far as we could collect them. It must be recollected that the adopted son, as such, takes by inheritance, and not by devise. Now the rule of Hindoo law is, that in the case of inheritance the person to succeed must be the heir of the last full-owner. In this case Bhowanny was the last full-owner, and his wife succeeds as his heir to a widow's estate. On her death the person to succeed will again be the heir at that time of Bhowanny.

If Bhowanny had died unmarried, his mother Chundrabully would have been his heir, and the question of adoption would have stood on quite different grounds. By exercising the power of adoption she should have divested no estate but her own, and this would have brought the case within the ordinary rule; but no case has been produced, no decision has been cited from the text books and no principle has been stated to show, that by the mere gift of a power of adoption to a widow the estate of the heir of the deceased son, vested in possession, can be defeated and divested.

The only case referred to in the argument before us or in the judgment below as tending in that direction is that of Lukkhee-naraen Thakoor, reported by Sir F. Macnaghten, page 168; but it is incontestable that in that case the disposition depended wholly on the testamentary power.—The authority to adopt was only subsidiary to the disposition of the property. The will of Lukkhee-naraen Thakoor is set-
forth in full in No 5, page 9, of the appendix to Sir. F. Mac-
naghten's works. It is termed a will; it appoints an executor; it
disposes of the whole estate, gives various legacies; gives the residue
to the child, of which his wife was pregnant, whether a son or a
daughter, in which latter case it would obviously break the legal
order of succession; and directs that at that child's death the adop-
tion of a son shall take place. We have already said that we express
no opinion as to the power of Gour-kishore to have made the dispo-
sition now insisted on by the appellant by devise of his estates, but
we find no such devise in the instrument which he has executed.
An additional difficulty in holding the estate of the widow of Bhowanny
to be divested may, perhaps, be found in the doctrine of Hindoo law,
that the husband and wife are one, and that as long as the wife
survives one half of the husband survives; but it is not necessary to
press this objection.

Upon the whole, we must humbly report to Her Majesty our opinion
on the original appeal, that the plaintiff's suit ought to be dismissed;
but inasmuch as the main expense of it has been occasioned by the
appellant setting up a state of facts which has turned out to be untrie,
and disputing the facts alleged by the respondents, which have been
established, we think that no costs should be awarded to either party
of the suit or of the original appeal. The cross appeal is wholly ground-
less, and we must advise that it be dismissed with costs.

The several orders and decrees complained of, so far as they are
inconsistent with the above recommendations, must be reversed.

Remark:—

The above decision does not appear to be quite consistent with the
Hindoo law as current in Bengal, where prevails the doctrine "factum
valet quod fieri non debuit." In the first place, their Lordships ought
have inquired and considered whether in Bengal a man is competent
to provide for the perpetuation or continuance of the offering of the
oblations of food and libations of water to the manes of himself, his
wife and their ancestors, and to regulate the succession to his estate.
Had they done so, they would have been satisfied that it is not only
the sacred duty of, but also incumbent on, a man destitute of male
issue to adopt a son;* that a man having a legitimate son, may not only authorize his wife to adopt a son after his death, failing such legitimate son, but also, failing the son so adopted, to adopt another in his stead;† that a Hindoo in Bengal may leave by will or bestow by deed of gift his possessions whether inherited or acquired, and the gift or legacy, whether to a son or to a stranger, will hold, however reprehensible it may be, as a breach of an injunction and precept;‡ that a Hindoo who has sons, can sell, give, or pledge without their consent, immovable ancestral property situate in the province of Bengal; and that without the consent of the sons, he can by will, present alter or affect their succession to such property.§ Such being the settled law of our country, Gour-kishore was quite competent to empower his wife to adopt a son in the event of his begotten son being non-existent, and to affect his heritable right and succession in the manner he did. Consequently the paper writing by which he did so, (and which is merely a documentary proof of what was done by him,) be it termed a deed of permission, gift or will,¶ is, to all intents and purposes, a valid deed, which could not be rendered ineffectual without the performance of the acts therein directed. Under such circumstances effect ought to have been given to it according to Gour-kishore's intention which could only be gathered from the legal and intrinsic significance afforded by the words used by him. Now the

* See ante, p. 738 et sequ.; †See ante, p. 761.
‡ See ante, p. 552.
§ See ante, p. 588.
¶ Will was unknown to Hindoo law; nevertheless, the power of a proprietor to dispose of his ancestral or acquired property verbally or by a deed of gift or by an instrument resembling a will has, in recent times, been recognized by analogy from the provisions of that law as to gifts. A Hindoo's will cannot therefore be expected exactly to agree with its definition as laid down by the English law. So considering it to be originated from gift Mr. H. Colbrough defines it to be "rather a gift in contemplation of death," and Sir William Macnaghten says: "a will is nothing more or less than—the legal declaration of a man's intentions, which he wills to be performed after his death." Now the Oncomuttesputter entered into by Gour-kishore quite corresponds with the latter definition, and being so, it ought have been looked to in the light of a will, as done by the lower Court (the late Sudder Dewanny Adawlut.) Many Hindoos of Bengal in their so called wills, having given permissions to adopt sons, and others, in their deeds of permission (to adopt sons,) having made dispositions of property and given legacies, such instruments are promiscuously and indiscriminately called—"wills" as well as "deeds of gift, permission, and so forth."

¶ But deeds containing dispositions and devises, are generally looked to in the light of wills-

791
phrase—"having regard to the future," and that—"to avoid the extinction of the pinda" contained in the deed in question, signify that the presentation of the oblations of food and libations of water should be perpetuated by continuance of the lineage by adoption, on failure of that by birth; consequently Bhowanny-kishore's having lived to an age which enabled him to perform all the religious services which a son could perform for a father is not at all sufficient,—the same not being tantamount to his having actually performed all the services which he ought to have performed, inasmuch as, a son's duty to his father is to perform religious services not once for all on his coming of age, but to continue to perform year after year, the anniversary Shrāddhas and the periodical Shrāddhas called pārvāṇa,* and, moreover, to liquidate his own debts to ancestors by continuing the lineage, that is, by having a son begotten or adopted.† During the few years that Bhowanny lived after coming of age, he could have, possibly performed only as many anniversary Shrāddhas, and few other religious services. Such being the case, their Lordships should not have presumed that Bhowanny had performed all the religious services for his father, when it was impossible and impracticable for him to do so. Moreover, he did not, and could not, perform any of the services for his mother who survived him, and for whose obsequies also a son was directed by Gour-kishore to be adopted; and this direction of his is quite consistent with our law which apprehending the discontinuance of the offering of the oblations of food and libations of water by the premature death of a man's son has provided the adoption of a son, in the event of his natural born son dying without male issue, the existence of a begotten or adopted son for a time and the performance by him of the religious services during that time not being sufficient in the eye of the law. (See ante, p. 734 et seq.)

* See ante, p. 20. Notes.

The future beatitude of the man depending, according to Hindu superstition, on the performance of his obsequies and the payment of his debts by a son, as the means of redeeming him from an instant state of suffering after death. The dread is, of a place called put; a place of horror, to which the names of the childless are supposed to be doomed: there to be tormented with hunger and thirst, for want of those oblations of food and libations of water, at prescribed periods, which it is the pious, and indeed indispensable, duty of a son (putram) to offer.—Str. H. L. Vol. I. pp. 61, 62.

† See ante. pp. 734 and 735.
Their Lordships further remark that 'the Onoomuttee-putter does not in express terms assign any limits as to the period within which the adoption may be made.'—But the expression 'if the male child of your body be non-existent, then you will adopt a son,'—plainly fixed the time at which the right to adopt was to accrue, and as Chundrabully was authorized to make the adoption, the end of her life must be taken to be the other limit (as mentioned in East's notes above cited) within which the adoption could be made. Our law too does not say that a definite period is required for the adoption of a son, but it simply prescribes that 'by a man destitute of a son only, must the substitute for a son of some one description always be anxiously adopted for the sake of funeral cake, water and solemn rites.'* As to their Lordships' apprehension—'it might have been that Bhowanee had left a natural born or adopted son, and that such son had attained majority in the life-time of Chundrabully,'—it is a reasonable one, as in that case, the power granted to Chundrabully would have been, as a matter of course, rendered ineffectual, the male issue wanted by Gour-kishore being supplied by Bhowanee's son, who would serve as such to Gour-kishore also, the term son importing and including male issue in the male line as far as the son's grandson.* But this was not the case before their Lordships: what they had to try was—'whether on the death of Bhowanee without issue male Chundrabully was competent to exercise the power granted to her by her husband Gour-kishore.' Had their Lordships tried this simple issue, determining the construction of the Onoomuttee-putter and the intention of Gour-kishore by the application of Hindoo law, at the same time taking into consideration the circumstance of Bhowanee's dying childless, their Lordships would have been convinced that the limits between which the power in question might be exercised was the death of Bhowanee and that of Chundrabully.

As regards their Lordships' observation that 'he (Bhowanee) had succeeded to the ancestral property as heir, he had full power of disposition over it, he might have alienated it, he might have adopted a son to succeed to it, if he had no male issue of his body, and he could have defeated every intention which his father entertained with respect to the property,'—it is also inaccurate. In the first place, Gour-kishore

---

* See ante, p. 738, et seq.
having affected Bhowanee's succession to his ancestral property making it conditional until he should perpetuate the offering of the oblations of food and libations of water as well as direct heirship to the estate by begetting or adopting a son, the latter did not, and could not, succeed to the property as (absolutely) his own, and in consequence he had not had the unlimited or full power of disposition over that property which he took subject to the reversion to Gour-kishore's adopted son in the event of his dying without issue male; and not having the full power of disposition, he could not have alienated the property at pleasure, nor could he have defeated every intention which his father entertained with respect to that property.

Further on, their Lordships observe that 'on the death of Bhowanee, his wife succeeded as heir to him, and would have equally succeeded in that character in exclusion of his brothers, if he had any. She took a vested estate as his widow in the whole of his property.' This also would appear to be inaccurate when considered in connection with the original proprietor's direction by which he provided against the emergency involving the extinction of the pinda or obsequies and the direct heirship to the estate. It is as follows:-'If, which God forbid, the male child of your body be non-existent, then you will adopt a son, from my race, for the purpose of performing mine and your Sráddhas, and for the Seva (service) of gods, and the succession to the zemindary and other property.' Now the Hindoo law says: "The will of the giver is the cause of property:"* "if they severally give or sell their undivided shares, they may do what they please with the property of all sorts; for surely they have dominion over their own."† Thus Gour-kishore's will or volition being the cause of Bhowanee-kishore's heritable right, and the former (as already shown) having had full power to affect the succession of the latter to his estate in the manner he did, Bhowanee could not have a vested estate so long as he could not fulfill the condition subject to which he took the estate, but only a conditional estate subject to the reversion as aforesaid; and when the estate in question could not vest in Bhowanee by reason of his failing to fulfill the condition subject to which he took it, he was not the last full owner, and he not being so, his wife could not take a vested estate in exclusion of the brother to whom, according to the original proprietor's will (which is the cause of property,) it was to revert on her husband's death without issue male.

Their Lordships have, moreover, observed that—'it would be singular if a brother of Bhowanee made such by adoption could take from his widow the whole of his property when a natural born brother could have taken no part.'—But they seem to have forgotten that a natural born brother, born after the patrimony was taken by his brother, has all the rights of a posthumous son;* consequently he would take his proper share from the brother (or his widow should she happen to hold the same;) and a brother adopted on the death of a brother having also all the rights of a posthumous son, would do the same; it would indeed be singular if either of them would or could take the whole from the widow who would certainly have her husband's share, which on the birth of a posthumous brother would amount to half, and on the adoption of a posthumous brother would be one third. The wife's being half the body of her husband is also no ground, in the present case, for the devolution of the whole of the estate upon her; inasmuch as though half the body of her husband, she not being half the son of her father-in-law, the necessity for the adoption of a son to him still subsisted, which (necessity) could only be obviated if Bhowanee had left a son or son's son by birth or adoption. Thus Bhowanee's coming of age, being married, and leaving a widow, him surviving, could not in the least provide against the extinction of the pinda, in anticipation or apprehension of which the Oonoomutte-putter was given, and as there existed certainly a necessity for the adoption of a son to perpetuate the offering of the oblations of food and libations of water, and continue the lineage, the above made no difference from the circumstance of Bhowanee's dying an infant unmarried. Further on, adoption being a positive act of religion, as it is incumbent on every man whose son has died or to whom no son was born, to adopt a son and also as there is no limitation to the adoption of a son, and son could be adopted whenever a man became certain of having no male issue, the power given by Gour-kishore to his wife to adopt a son in the event of Bhowanee-kishore's being non-existent, was certainly capable of execution on his being non-existent without leaving any male issue, begotten or adopted, no matter if he died after attaining majority. (which enabled him to perform all the religious services for his father,) and leaving a widow. The only difference that existed in the adoption under the above circumstance is, that the son so adopted

* See the section treating of the son born after partition. Ante, p. 52 et sequ.
cannot take the whole of the estate; for, when it is not provided in the Onoomutee-putter whether in the event of Bhowanee's leaving an heir other than a son, and superior to the mother, the son adopted by Chundrabully to Gour-kishore would take the whole or only a certain portion of the estate, then the law of inheritance must have its course, according to which law the adopted son Ram-kishore appears to be entitled to no more than one-third (the legal share of a posthumous son by adoption,) and to that extent alone the widow of Bhowanee can be divested retaining the other two-thirds, the same being the portion of her husband with an adopted brother, and devolving on her as his widow and heir. As the above judgment seems to have proceeded from want of a thorough knowledge of our religious services or rituals, it is hoped their Lordships will be pleased to rectify the same in their earliest opportunity.

Case no.—452 of 1850.

Gour-nauth Choudhree and others (Plaintiffs,) Appel-
lants, versus Anno-poorna Choudhoo-rain
(Defendant,) Respondent.

Judgment.

On reference to Macnaghten Volume I., page 86, we find it is a disputed point whether a widow having, with the sanction of her husband, adopted one son, and such son dying, she is at liberty to adopt another without having received conditional permission to that effect from her husband. According to the doctrine of the Dattaka-mimansa, the act would clearly be illegal, and this work is authoritative on the subject of adoption.

As it appears from the decision of this court, at page 135, Volume I., Sudder Dewanny Adawlut Decisions, that on special permission granted, one son may be adopted on the death of another, and no case has been brought forward to show, that without such permission such adoption would be valid; and further, as it is a principle of Hindoo law, that without permission no son can be adopted, it is a fair legal inference, that a second adoption on the death of the first child, when the husband is no longer alive to grant permission to adopt, cannot be valid. We therefore set aside the alleged adoption of Gooroo Dutt.
Anno-poorna is no where denied to be the widow of Nabo-kishore Serma, and has pleaded that during her life-time she is entitled to the property left by her husband. she is no doubt by Hindoo law entitled to keep possession of the property which she now holds during life. Thus the defendant Anno-poorna will continue in possession during her life by right of succession to her deceased husband."—The 27th of April 1852. S. D. A. D. p. 332.

REMARK. The above decision is quite correct according to the Dattaka-mimónśā; but it does not appear to be so according to the Dattaka-chandrikā, which is adhered to in Bengal in preference to the former, and which being silent in the matter may be construed to permit, at least not to prohibit, the adoption in question, inasmuch as the same work has laid down that "if there be no prohibition even, there is assent, on account of the maxim: "the intention of another not prohibited, is sanctioned (D. Ch. Sect. I. § 32.) Thus when the act is not prohibited by the Dattaka-chandrikā, but is expressly sanctioned by the Vivāda-vangārnava, the practice of the act should be allowed in Bengal by the dispensers of justice, more specially when it is reasonable as well as religious. Thus Vṛihaspāti: "A decision must not be made solely by having recourse to the letter of the written code; since if no decision were made according to reason, of the law, there might be failure of justice."† So also Jāgnyavalkya:—"If two texts of law differ, reason (or that which it best supports) must in practice prevail."‡

Case No. 317 of 1852.
Anund-moye Chowraian, and Bhagbutter Gooptea. (Defendants.)
Appellants versus Sheeb-chunder Roy alias Nund-lall Roy, Fa-
ther and well-wisher of Greesh-chunder Roy, Minor,
(Plaintiff,) Respondent.

The Court directed the pleader for the appellant to plead his fifth issue:—whether the Unoomee-puter, on which Hurro-monee adopted the minor Greesh-chunder, be a valid deed, as that is the ground on which the suit is founded.

* This should be to her deceased son instead of husband.
Kishen-kishore for Anuud-moye. The Court will observe the date of the Unoomuttee-putter of Hurro-monee is the very day of the death of Bhoobun. Bhoobun was then a minor under the Court of wards, and Kallee-persaud Roy was his appointed guardian. On the 15th May 1845, Hurro-monee deposed that she was 14 years old, and at great length to numerous interrogatories, yet made no allusion to the Unoomuttee-putter. There are four witnesses to the Unoomutee-putter and the first publication of it was in a suit on 1st July 1847. The Court here stopped the pleader and asked Roma-persaud, how a person, that is a disqualified landholder, a minor, can empower another to adopt, when he can not himself adopt without the authority of the Court of wards; or in other words, that he can delegate a power which he does not himself possess? Answer. The law prohibits actual adoption only in a minor, but does not restrict him from granting the permission to adopt, as the Hindoo law has no restriction of the time for granting permission to adopt; minority is no bar.

**JUDGMENT.**

The law declares "no adoption by disqualified landholders is to be deemed valid without the consent of the Court of wards, on application made to them through the Collector."—Section XXXIII, Regulation X of 1798. A. D.

It follows necessarily that no power to adopt can be granted by such a person without the consent of the Court of wards. Bhoobun, the person who granted the power to adopt on which this suit is founded was a ward at the time of the said Court: and the consent of the Court was neither asked nor obtained; it is therefore invalid, and the suit must be dismissed.

The decision of the Principal Sudder Ameen is reversed and the appeal decreed with full costs. The 30th of April 1855.—S. D. A. D. p. 248.

**REMARK.** The answer made by Baboo Ruma-persaud Roy is not consistent with the law, inasmuch as, it is not a matter of purity or impurity, (as in the case of a leper) that it would make a difference between giving a permission to adopt and actually performing the act of adoptions,* but it is a question of competency

---

* See ante, pp. 757 & 780.
and incompetency on account of age. And as the effect of a minor's delegating power to adopt, and that of his personally adopting, a son, is the same, the age rendering him competent to authorize his wife to adopt for him is not different from that which makes him competent personally to perform the act.* The Court's decision, however, does not appear to be an improper one; inasmuch as it makes no objection on the ground of Hindoo law to the validity of a power (to adopt) given by a minor in general, but only invalidates such power given by a ward without the consent of the Court of wards.

Mussummat Sulkhna, widow of Soonder-narain, Appellant, versus Ram-doolaul Pandey and others.

Case

The plaintiff sued in behalf of the minor, Shama-persaud, his son, whose mother, Bishen-pria, was the daughter of Raja Jadoo-ram; and the suit was instituted on the ground that the zemindary claimed was the right of the minor, grandson of Jadoo-ram, by the Hindoo law of succession.

The defendant Soonder-narain pleaded that, after the demise of Joy-narain Roy, son of Koor-narain Roy, and grandson of Jadoo-ram Roy, the zemindary having fallen to Ranee Soo-gundha, the 2nd wife of Koor-narain, she, under authority delegated from her husband, adopted him (Soonder-narain) executing at the same time, to his father, an instrument termed Niyum-putter; after which she continued in possession of the zemindary till 1210, when, shortly before her death, she made it over to the defendant.

The Zillah Judge passed a decree, reciting that, in the preceding cause, the allegation of the defendant, as to his adoption, had been adjudged false, and the Niyum-putter a fabrication; that in the present case, Lulkhee-narain and others, four sons of Bishen-pria, Huree-pria, and Kooram-munce, daughters of Jadoo-ram, appeared to be heirs of the zemindary.

On appeal by Soonder-narain from this judgment to the Provincial Court of Moorshedabad, that Court affirmed it.

After the institution of a further appeal to the Sudder Dewanny Adawlut, Soonder-narain died, and was succeeded by his widow, as appellant. The Sudder Dewanny Adawlut (present J. H. Harington)

† See ante, p. 770 et sequa.
directed that the Niyum-putter set up by the appellant and the genealogical table of the family, should be given to their Pandits, for an exposition of the Hindoo law on the points as contained in the following questions: 1st. If a widow, with authority from her husband adopts a son, is it usual or not for her to execute a document of the nature of the Niyum-putter exhibited by Soonder-narain? and if such document be executed by the widow, does it or not preclude the right of the adopted son to succeed to the husband's zemindary during the life of the widow? 2nd. If a widow adopts a son with the sanction of her husband, does the widow, or the son, thence forward, perform the obsequies and other religious ceremonies, in the name of the husband and his ancestors? 3rd. If a zemindar die leaving a son, whose mother is dead, and a second wife, is it customary and legal or not to authorise the 2nd wife to adopt a son, on account of probable disagreement between her and the son of the first wife, or on any other account, except in the event of the death of the son by the 1st wife? 4th. If Soonder-narain was not adopted by Soo-gundha under authority from her husband; or if his adoption be not proved, or, though established, be not of avail in law, who were the legal heirs at the demise of Raneo Soo-gundha, to the zemindare in dispute, possessed formerly by Raja Jadoo-ram; then by his son Koor-narain; then by Joy-narain, son of Koor-narain, and after Joy-narain's death, by Soo-gundha, his step-mother,—there existing, at Soo-gundha's demise, Bishen-pria and Huree-pria, daughters of Raja Jadoo-ram, Shama-persaud, Anund-laaul, Nund-laaul, and Lukkhi-narain, sons of the said daughters of Jadoo-ram; and there now existing also Modhoo-soodun and Gunga-narain; two other sons of the daughter of Jadoo-ram; who have been born since the demise of Soo-gundha.

The answers returned to these questions by the Pandits were as follows: 1st. When a woman, after the death of her husband, adopts a son under authority received from him for that purpose, it is not lawful or customary to execute an instrument of the purport of the Niyum-putter; and though such an instrument be executed, the adopted son, during the life of the woman adopting him, becomes proprietor of the estate left by the husband and his deceased son. The widow is not entitled to possess the estate by virtue of such a document. 2nd. When a woman, under authority from her deceased husband, adopts a son, thence forward the ceremonies mentioned must be per-
formed by the adopted son in whom the right vests; not by the widow." 3rd. If a zemindar have two wives, and, by the first, who is deceased, a son eleven years of age, and no son by the second; in such case it is not lawful for the zemindar, when ill, a few days before his death, on the representation of his second wife, that there would not be cordiality between her and the son of the first wife, to give authority to his second wife to adopt a son, in case of disagreement with the said son. But provisional authority to adopt in the event of the death of such son, would be lawful. And if a zemindar, having a son of his body, with the consent of such son, or from a wish to have more sons (for the performance of religious acts) give authority to his wife to adopt a son, such authority, according to the Shastrā and usage of the country, is lawful.*

4th. If Haneed Soo-gundha adopted Soonder-narain without authority from her husband, or his adoption be not valid in law, the zemindar in dispute legally devolves after the death of Soo-gundha to Shama-persaud, Anund-laul, Nund-laul, and Lukkhi-narain, sons of the daughters of Jadou-ram, who were then alive, and to Gunga-narain and Mudhoo-soodun, two other sons of the daughters of Jadoo-ram, who are since born, the whole six heirs being now alive, in equal proportions.†

The Pandits were further questioned by the Court, whether, supposing one or more sons to be hereafter born to Huree-pria, the surviving daughter of Jadoo-ram, they would be entitled to any share of the inheritance; and it was declared, in answer, that they would be entitled to share with the other daughters' sons of Jadoo-ram, who are now living.†

Whether a Hindoo, having a son of his body, can in any case authorise the adoption of a son during the life of such son of his body, appeared to the Court an important question of law not fully investigated, or settled; but which, without proof of authority for the adoption having been delegated to Soo-gundha, it was not necessary to determine in the present instance.

The evidence to the delegation of the authority for the adoption, which was in itself manifestly suspicious, and which was given by the

* To authorise one's wife, with the consent of the son of his body, to adopt a son, is consonant to the law as current in the Benares School and the other Schools subordinate thereto, but not to the law and usages of Bengal.

† This is wrong. See the Succession of the father's daughter's son, and the subsequent precedents and remarks.
same persons who, in the judgment of the Court, gave false testimony to the execution of the Niyum-putter, was not considered competent to establish the fact of authority having been delegated to Sook-gundha by her husband for the adoption of Soonder-narain, and, consequently no title of succession to the disputed estate was deemed to have vested in him.

The decrees of Zillah and Provincial Courts, as far as they rejected the alleged adoption and title of Soonder-narain, were affirmed. But as there appeared to be now six daughters' sons of Jadoo-ram, viz. Shama-persaud, Anund-laal, Nund-laal, Lukhhi-narain, Mudhoo-soodun, and Gunja-narain, (the two last born to his daughter Huree-pria since Sook-gundha's death,) and, according to the exposition of the Hindoo law delivered by the Padilts, these six were entitled to share the zemindary equally, with reservation of the eventual birth of other sons to Huree-pria, who would be entitled to share with the other daughters' sons; the zemindary was adjudged, with this reservation, to the six daughters' sons of Jadoo-ram above specified, as being the heirs at law to Joy-narain, who held the estate before Sook-gundha.—May 27th., 1811, S. D. A. Rep. Vol. I. p. 324.

Rungama (widow,) for herself and on behalf of Luchmi-putty Naidoo, Appellant, versus Atchama (widow,)
Ramanadha Baroo, and Puttoory Cally Doss, Respondents.

And

Atchama (widow) Appellant, versus Ramanadha Baroo, Respondent.

The Right Hon. T. Temberton Leigh.

Case bearing on the vyavasthas Nos. 508 & 511.

The question in these appeals relates to a very large property in the Northern Circars, which, in the year 1798, belonged to a zemindar named Vencatadry.

Vencatadry, being childless, on the 2nd of April 1798, adopted as his son a boy Jagannadha. On this occasion he signed a paper bearing date the 7th of April 1798. In this paper, after reciting the adoption, he proceeds to say "Therefore, be it believed, that I have executed this, my tutelar deity bearing witness, that Jagannadha Naidoo is huk-dar, or heir, to my zemindary mourasy, to my wealth and
debts; and that I have it not in my power, on any account whatever, to make over (the same) to any other person besides in him (Jagannadha Naidoo."

Of the fact, or the validity of this adoption, no question is made. He afterwards became desirous of adopting another boy, named Ramanadha, and of dividing his property between them. It is said by the appellants, and many witnesses have sworn, that he consulted certain Pandits as to the validity of a second adoption, and was advised by them that a second adoption could not be legally made.

It was contended by the appellants that, upon the whole evidence it was to be inferred that, in consequence of this opinion, although he brought up Ramanadha as his son, he never adopted him with those religious ceremonies which were necessary, in order to constitute a valid adoption, according to the Hindoo law. We have no doubt, however, that he did whatever was necessary to constitute a valid adoption, if such second adoption could, by the Hindoo law, be valid.

In 1815, Jagannadha attained the age of eighteen, when he came of age. After this, in 1816, Vencadtry made a new division, between his two sons, Ramanadha being still under age, and, as it seems, about nine years old. Jagannadha took possession of the property so allotted to him; and Vencadtry seems to have remained in possession of what was allotted to Ramanadha. In the course of the year 1816, Vencadtry died. Jagannadha claimed the whole of the property of Vencadtry, alleging that the adoption of Ramanadha was invalid, and at all events did not constitute him a co-heir.

The first of the suits, now in controversy, began in 1820, being a suit instituted by Ramanadha against Jagannadha, to establish his right to that portion of the property which had been allotted to him, in his character of adopted son, by Vencadtry.

In 1824, a decision was pronounced against Ramanadha, from which, however, he appealed, and before the appeal had been heard, and on the 28th of February 1825, Jagannadha died. He left no natural born issue, but two wives, Rungama and Atchama, and a boy who had been brought up in his house, and who is said to be his adopted son, named Lutchmi-putty.
The question then arose, who was entitled to succeed to the estate of Jagannadha; the question of what the estate of Jagannadha consisted, that is, whether he was entitled to the whole, or only half of the estate of Vencatadry, still remaining unsettled. With respect to the right of succession to Jagannadha, it is not disputed that, if he left a son, whether a natural born, or legally adopted, such son would be entitled to succeed; that, if he left no son, but an undivided brother, such brother would be entitled to succeed; that, if he left no son nor undivided brother, the widow, or one of the widows, would be entitled to succeed.*

On the death of Jagannadha, Ramanadha set up a title to the whole estate of Vencatadry, alleging that he and Jagannadha were undivided brothers, and that Jagannadha had left no issue, natural born or adopted.

Rungama at first acquiesced in the claim of Ramanadha, it being alleged by her that she was deceived by Ramanadha, who got authority, to act for her.

Lutchmi-putty was a child of about six years old, and no claim was brought forward on his behalf. Atchama, however, instituted a suit, claiming the whole of the estate of Jagannadha, and insisted that she was entitled to inherit. Afterwards, Ramanadha and Rungama having quarreled, the claim of Lutchmi-putty was advanced. The Sudder Adawlut decided that Jagannadha and Ramanadha were undivided brothers; and that Lutchmi-putty was not the adopted son of Jagannadha; that consequently Ramanadha was entitled to the whole inheritance which had come from Vencatadry: and against this decree the present appeals are brought.

The question for our decision relates, first, to the estate of Vencatadry; and, secondly, to the succession of Jagannadha.

The conflicting parties are:—First, Lutchmi-putty, who claims the whole inheritance which came from Vencatadry, on the ground that Jagannadha was the only adopted son of Vencatadry, and that he, Lutchmi-putty, is the adopted son of Jagannadha. Secondly, Atchama,

* If there be many widows, they inherit simultaneously and equally; the eldest of them does not alone succeed to the exclusion of the rest. See ante, p. 41.
who insists that Lutchmi-putty was not well adopted, and that she, as eldest widow, is entitled to succeed to the inheritance of Jagannadha. Thirdly, Rungama, who maintains the case of Lutchmi-putty, but insists that, if he is not the adopted son, she is entitled to share with Atchama, in the succession of Jagannadha. Lastly, Ramanadha, who maintains the decree as it stands.

As far as concerns Ramanadha, his whole title depends on the validity of his adoption. If not well adopted, he was neither co-heir with Jagannadha, nor heir to Jagannadha.

The first question, therefore, is, as to the validity of a second adoption, the first adopted son still existing, and remaining in possession of his character of a son.

This appears to have been long a point of great doubt in Hindoo law, and is stated by the Judges in this case, to be unsettled.

Three classes of authority have been referred to:—first, The opinions of the Paṇḍits, secondly, The native authorities as found in the Hindoo treatises; and thirdly, The European authorities.

First. As to the Paṇḍits; there is a considerable difference of opinion amongst them.

On the death of Vencaddry, there is a certificate signed by 140 Brahmins, that the adoption of Ramanadha was invalid. But as this was an opinion produced by Jagannadha, then in possession of the estate, but little weight is due to it.

On the other hand, in 1818, before the institution of the suit by Ramanadha, the northern Provincial Court took the opinion of their own Paṇḍit and of the Paṇḍits of the Centre and Southern Division of the Courts, on these questions:—

"I. Is a person, having, conjointly with a wife, adopted a son, and thereafter being displeased with her, and marrying a second wife, authorised by Hindoo law, conjointly with her, the second wife, to adopt a son?

"2. A person, adopting a son, having for any reason adopted a second son, is the former, or the latter, heir to the estate of the adopting father, or are both sons entitled to share the same?"
These Pandits all agree in holding that the second adoption is valid, and that both sons are equally entitled to inherit.

These opinions, however, are by no means conclusive, and the appellants contend, that the native authorities, upon which they are founded, are strongly against the validity of a second adoption.

In the Digest of Hindoo Law, on Contracts and Successions, with a commentary by Jagan-nátha, translated by Mr. Colebrooke, the question is discussed and treated as one in which a difference of opinion prevailed. The most material passages of the Treatise are found in pages 385, 389, 395, 397. The author holds the better opinion to be, that an adoption is valid, although a previously adopted son, or even a natural born son, be already in existence; the main foundation of that opinion being an ancient text, "that many sons are to be desired, in order that one may travel to Gya."

Whatever, however, may be the effect of this practice, its authority is far outweighed by two other Hindoo works, expressly on the subject of adoption, the Dattaka-mimánsá and the Dattaka-chandriká.

The first passage, sect. 1, para. 3, in the former of these works, is the citation of a text of an ancient sage, Átri, in these words: "By a man destitute of a son, only, must a substitute for the same always be adopted for the sake of the funeral cake, water, and solemn rites." This, perhaps, standing alone, may be held to mean that upon such a one only was it incumbent to adopt a son. The commentary, however, excludes this construction, for it says, sect. I, para. 6, "By a man destitute of a son only." The incompetency of one having male issue is signified by the term 'only' in this passage." The author then, after quoting a text from Mánú, much to the same effect with that cited from Átri observes, that the instances of adoption by certain illustrious persons, of sons, although they already had male issue, must be considered as exceptional cases, and not as generally authorising the act. In the next paragraph [12] the author seems to concede, that a second son may be adopted, with the sanction of the existing issue. *

The Dattaka-chandriká (sect. I, para. 3) cites the same text from Átri and Mánú, and puts the same construction on them, as the Dattaka-mimánsá.

* This doctrine is prevalent in the other schools, not in Bengal.
We think that these treatises are more distinct than the work of Jagan-nātha: they are written on the particular subject of adoption; they enjoy, as we understand, the highest reputation throughout India; and their weight is strong against the second adoption.

In the ordinances of Manu, translated by Sir William Jones, we find this passage, in page 133: "He, whom his father, or mother with her husband's assent, gives to another as his son, provided that the donee have no issue, is considered as a son given."

In the Vivādārṇava-setu, translated by Mr. Halhed, (Ch. XXI, Sect. 9.) the proposition is distinctly stated, "He who has no son, or grandson, or grandson's son, or brother's son, shall adopt a son; and while he has one adopted son, he shall not adopt a second."

If we are to form our opinion of the law, from the effect of these authorities, we can have no hesitation in coming to a conclusion adverse to the validity of a second adoption.

Sir Thomas Strange, (however,) in the Elements of Hindoo Law Vol. I. p. 78. (2nd. Edit.) expresses himself as follows:—"In general it is in default of male issue that the right is exercised, issue here including a grandson, or great grandson. But as there exists nothing to prevent two successive adoptions, the first having failed, whether effected by a man himself, or by his widow or widows after his death, duly authorised; so, even where the first subsists, a second may take place, such having been the pleasure and will of the husband; upon the principle of ' many sons being desirable, that some one of them may travel to Goya; ' a pilgrimage considered to be particularly efficacious in forwarding departed spirits beyond their destined place of torture." In support of these propositions, he refers to two cases—Sham-chander versus Naraynee Dibbh (1 Ben. Sud. Dew. Rep. 209) which was decided in 1807; and Gouree-persaud Roy versus Mussum-maut Joymala (4 Ben. Sud. Dew. Rep. 136.) which was decided in 1814.

Now, the first of these cases decided only that a second adoption is valid, when the first adopted son has died without issue; a point of law which is not disputed. In the second case, a man having two wives, gave authority to each of them, to adopt a son. One of them
made the adoption. He himself, together with the other wife, afterwards made an adoption; and it was finally held, that the two sons were entitled equally to inherit to the husband.

This was a very peculiar case; it certainly seems to assume the validity of a double adoption. This decision is also stated by the Court, to be in conformity with the preceding case of Sham-chunder versus Naraynee Dibeh, which, in truth, for the reason already mentioned, it in no degree supports.

These, we believe, are the only European authorities referred to, on behalf of Ramanadha. With reference to these cases, it may be observed, that they have never been considered as settling the law upon this subject. In a note to the case of Naraynee Dibeh versus Hurskiehore Roy (I Ben. Sud. Dew Rep. 42,) which, it seems, was supplied to the Reporter, by Mr. Colebrooke, the Translator of Jagan-nâtha's Digest, he states the point as one of doubt, and on which, although the authority of Jagan-nâtha was in favour of the adoption, the weighty authority of the Dattaka-chandrikā was the other way.

Every European, without any exception, as far as we have any information, who has since examined the subject, has come to a conclusion adverse to the second adoption. In a note to Strange's Elements of Hindoo law, Vol. II. p. 85 (2nd, Edit.) the law is thus stated by Mr. Sutherland, a very high authority:—"A Hindoo cannot have legally adopted children; a son legitimate or adopted existing, any subsequent adoption would be invalid; at least the son so adopted would not inherit."

In Mr. Sutherland's Synopsis of the Hindoo Law of Adoption, p. 212, he thus expresses himself;—"The primary reason for the affiliation of a son being the obligatory necessity of providing for the performance of the exequial rites, celebrated by a son for his deceased father, on which the salvation of a Hindoo is supposed to depend, it is necessary that the person proceeding to adopt should be destitute of male issue capable of performing those rites. By the term issue, the son's son and grandson are included. It may be inferred that, if such male issue, although existing, were disqualified by any legal impediment (such as loss of caste,) from performing the rites in question, the affiliation of a son might legally take place".
In Mr. Steel's Synopsis of the Law of Hindoo Castes, he states, (p. 48)—"An adoption can take place only where no begotten son or grandson exists, or where the begotten son has lost caste." Again at p. 52: "In the case of the death of an adopted son (and total loss of caste is considered equivalent to death,) another may be selected and given in the same manner; but a man, after adopting one cannot adopt another, at the desire of a second wife, &c. Only one adopted son can subsist at one time." It is true that the treatise purports to relate to the customs of the provinces of Bombay; but we are not aware of a difference between the different provinces, on this point, though there appears to be some minor differences, on other points of the law of adoption.

But by far the most important authority is Mr. William Macnaghten, whose Principles and precedents of Hindoo Law were composed, as appears from the preface, after collecting all the information that could be procured from all quarters, and after a careful examination of all the original authorities, and of all the opinions of the Pundits, recorded in the Supreme Court, for a series of years.

This work was published after his report of the two cases already referred to, and of course he could not but be acquainted with them; indeed, he refers to one of them. Now, Mr. Macnaghten states the law, as he considers it to be, without the slightest doubt or hesitation. He says, (Vol. I. p. 80,) "It is clear that a man having adopted a boy and that boy being alive, he cannot adopt another." And he examines the text, that "many sons are to be desired, in order that one may travel to Goya," and says that it applies only to natural born sons.

We are informed by our very learned Assessor, Sir Edward Ryan, that this work of Mr. Macnaghten's is constantly referred to in the Supreme Court, as all but decisive of any point of Hindoo law,* contained in it, and that much more respect would be paid to it, by the Judges there, than to the opinions of the Pundits. Upon the particular point in question, Sir Edward adds all the weight of his own high authority, concurring as he does entirely in the law, as stated in Macnaghten.

* But see a. f., p. 569.
The Judges in the Sudder Court state, that they are aware that this has been long considered a doubtful point, and they seem to proceed entirely on the opinion of the Pandits, who favour the second adoption.

Those Pandits rest upon two main points:—

First. The text that 'many sons are to be desired in order that one may travel to Goya.'

Second. Upon the doctrine that 'he who has only one son is to be considered as childless.'

Now, the first text is evidently out of the case, if Mr. Macnaghten's explanation be correct; and as to the second, in referring to the passages on which the Pandits rest, they manifestly relate, not to a person who receives a child, but to one who gives a child, in adoption.

Upon the whole, therefore, for these reasons, we have come to this conclusion, that the adoption of Ramanadha was not valid, and, that the Judgment of the Sudder Court upon that point must be reversed.

If we had come to a different conclusion on this subject, it would have been necessary for us to examine into the effect of the deed, alleged to have been executed by Venkatadry, on the adoption of Jagannadha.

Feeling the hardship of this case on Ramanadha, we have looked with some anxiety to see whether his title could be maintained, on the ground that it was subsequently recognised by Jagannadha, and that such subsequent recognition might be considered equivalent to previous assent.

We think it, however, impossible to maintain his right upon this ground. Supposing Jagannadha to have acquiesced, after he came of age, in the division of property made by Venkatadry, it was an acquiescence on the footing of a right, already asserted by the father, to exist in Ramanadha, and it does not appear that Jagannadha possessed all the knowledge, or was placed in the circumstances which must exist, in order to make his ratifications binding even if we assume, what is not by any means clear, that such subsequent ratification would be equivalent for that purpose, in Hindoo law, to previous consent. It appears, however, that there was some property, both real and personal,
of which Vencadtry had the power of disposing; and by an act inter vivos, without the consent of Jagannadha; and we think that he made a gift, as far as he could, of his property between his two sons.—We think, that effect must be given against the estate of Jagannadha, to the intentions of Vencadtry, as far as he had the power of effecting them. If Jagannadha takes, as we think he is entitled to do, the whole ancestral property, which the father could not dispose of, without his consent, we think he must give up, for the benefit of Ramanadha, the whole property included in the division, to the disposition of which his consent was not necessary.

Ramanadha being removed from the contest, as to the succession of Jagannadha, the question as to that succession is in dispute between Lutchmi-putty and Atchama; for Rungama, though she may have the same interest with Atchama in opposing Lutchmi-putty, supports his claim.

The question then is, was this boy well adopted or not?

Upon the whole, after a long and anxious consideration of the subjects we feel ourselves called upon to differ upon this point also, with respect to the adoption, from the judgment of the Court below, and to hold that Lutchmi-putty was well adopted, and is entitled to succeed to the whole estate of Jagannadha, subject to such maintenance as his widows may by law be entitled to.—16th, 17th, 18th, 19th, & 30th of June, and 1st, 2nd, and 3rd of July 1846.—Moore’s Indian appeals, Vol. IV. pp. 89—113.

Case No 340 of 1848.

Joy-chunder Roy, Appellant, (Plaintiff) versus Bhyrub-chunder Roy and Kashee-nath Roy Respondents, (Defendants.)

Cases bearing on the vyavastha' Nos. 516, 517 & 519.

I. This case was brought before a full Bench by Mr. Dick with the following note:—

The allegation of plaintiff is that Kishen-chunder, the former proprietor of the property in suit, had two wives, the elder named Lukkhee-pria, and the younger named Joy-doorga. First, by Lukkhee-pria, he left a daughter, and by second Joy-doorga, a son, called Kirty-chunder. Kishen-chunder by a deed, dated 10th Assar 1212
B. S. gave Lukkhee-pria power to adopt a son, who was to have 1\frac{1}{4} anna of his (Kishen's) estate, consisting of 4 annas, and 1 pie share. The residue (2—3rds) was to belong to his own son, Kirty-chunder. In the same year 1212 B. S., Kishen-chunder died. His son, Kirty-chunder, succeeded to the entire estate of Kishen, and died a minor in 1220 or 1221. B. S. His mother, Joy-doorga, succeeded her son Kirty, and died in Pous 1229. B. S. After the death of Joy-doorga Lukkhhee-pria adopted plaintiff, and plaintiff's name was registered as 1\frac{1}{4} anna's sharer, with the consent of Bhyrub, defendant, whose name was registered for the residue (2—3rds,) both in lieu of the name of Joy-doorga in the Dinagepore collectorate, for the portion of the estate situated in Dinagepore. The Collector of Rungapore refused to recognize the right of plaintiff, as it had been denied before him by Bhyrub and therefore Bhyrub's name alone was registered for the portion situate in Rungapore District. Plaintiff now sues for the residue (2—3rds) of the estate situated in Dinagepore, and for the entire 1\frac{1}{4} situate in Rungapore as heir of Kirty-chunder.

Defendant, Bhyrub, demurred to the suit as barred by the law of limitation; and denied the plaintiff's right, on the assertions—first, that plaintiff was never adopted; and, second, that Lukkhee-pria had no power to adopt.

**JUDGMENT.**

The principal Sudder Ameen dismissed the plaint on other grounds than those which, in our opinion, should rule the decision of the case.

The argument for the appellant has first been met by objections which go against the admission of the plaint at all. It has been urged in the first place, that the judgment in the Rungapore Court in a case between the same parties is a decision respecting the same cause of action; bringing the suit within the prohibition of Section 12, Regulation 3, 1793.

Secondly. That the admitted failure of the widow to adopt for a period exceeding 12 years, is a bar to the hearing of the plaint under section 14 Regulation 3, 1793, in support of which the decision of the Sudder Dewanny Adawlut, at page 70 of the Volumes for 1845, is quoted.
Thirdly. That the alleged permission, under which the adoption was made, is illegal, inasmuch as it contemplates the adoption of a son as co-heir with the natural born son then living.—The law on that point having been recently settled by a decision of her Majesty's Privy Council, to be found at page 1, part 1, of Volume IV, Moore's Indian appeals.

The appellant has denied the force of these pleas; and on the third, has specially referred to a case disposed of by her Majesty's Supreme Court at Madras (Vol. I. Strange, p. 91.) as shewing that there might be a modification by a widow of the authority to adopt given by her husband, deceased.

As regards the first plea, we have no doubt that the Rungpore decision is no bar to this suit.

On the second point, we observe that Section 14, Regulation 3 of 1793, relates only to the lapse of 12 years after the deprivation of right by an act of the adverse party, which compels a resort to a legal action and does not refer to a mere omission to exercise a right within the period of 12 years; the case quoted at page 70, of the Sudder Decision of 1845, is one in which adverse possession had been held under a bond-fide title for 19 years.

On the third point, however, we are of opinion that the decision of the Privy Council, cited, has conclusively settled the point of law that an adoption, a son still existing and remaining in possession in his character as a son, is invalid.

It is certain that the permission to adopt alleged in this instance, the terms of which as set forth in the plaint, referred exclusively to the adoption of a son as a co-heir with a son then living. It is impossible to convert this permission into a permission for what is altogether a distinct purpose, i.e. the adoption of a son after the death of the natural born son then living. The case at Madras, referred to in the argument before the Court, is one where the permission was legal, and the decision turned upon the construction to be fairly and reasonably given to the intention of such permission.

It can furnish no authority for enabling a widow to correct an illegal permission by modifying it, or groundlessly assuming the exis-
tence of a permission which might have been legal. We therefore
dismiss the appeal, with all costs, upon the ground of the plaint alone
as raising a claim untenable in law. We would note, however, upon
Mr. Dick's remark as to an estoppel of the defendant, in consequence
of an admission made by him in an alleged petition to the judge of
Dinagepore, dated 8th Phalgun, 1229 B. S., that the recognition of the
claim of the appellant by the respondent in Dinagepore, on which the
mutation of names in the 1½ anna's share in that District was effect-
ed on 10th Jait 1230 B. S. was on the 29th Aughun, idem, repud-
iated by protest in the Rungpore District for 1½ annas share in that
District by the respondent; so that we should not, had the decision
turned on that point, hold him as now precluded, in consequence of
his first admission, from contesting the same point in this suit
for Kirty-chunder's separate share of the property, situate in Rungpore
as well as in Dinagepore. 1849. S. D. A. D. pp. 461—465.

Mohendro-loll Mookerjea versus Rookinny Dabee
Before Macpherson, J.

II. As regards the adoption of Gostobeharry, I think it bad, be-
cause, though there was a conditional power to Surnomoye to adopt,
it was not a power which could be exercised in the event which has
happened. Brojo-mohun leaving his wife pregnant, made a will giving
her authority in writing to adopt in case the son to be born should die.
The contingency contemplated by Brojo-mohun never happened, for
Surnomoye had a daughter, and not a son. It is contended that, as
it evidently was the intention of Brojo-mohun, that in any event he
should have a son adopted, if not natural, the court ought to hold this
power sufficient even though the contingency provided for did not ac-
tually occur, but in my opinion the power in the will must be construed
strictly, and there are cases which show that the Court usually do read
such powers strictly. Thus where a widow has received permission to
adopt a son and she adopts, and the adopted son dies, she cannot
adopt a second son in his room (S. D. Reports for 1852 page 332,)
and where a widow had received authority from her husband to adopt
the son of a certain person named, and she adopted that son but he died
shortly afterwards, it was held that the authority given by the hus-
band did not extend to the second adoption (Select Report Vol. II.
p. 318.) In these cases there is as little reason as in the present to
doubt that the husband intended to secure to himself a son in any event. But it is said that, besides the power given by his will, Brojo-mohan gave a separate verbal direction to his wife to adopt. The facts proved, however, do not bear this out. All that the widow speaks to is, that her husband talked to her about her adopting a son both before and after the writing took place, but she distinctly says that the directions given by her husband were put in writing. On that writing the power now rests. Mr. Newmarch reads the English Translation of the clause containing the power as showing a belief on the part of Brojo-mohan that his wife had authority from him to adopt quite independently of the authority he was giving her by his will; but this is a forced reading even if the words were in the translation, and it is not supported by the Bengalee words in the original will. As regards Brojo-mohan, I think his adoption proved. It is clearly established by the evidence of Kisto-mohan and Gopaul Mullick that Radha-kaunt gave his widow authority in writing to adopt. It is true, the document by which the authority was given is not now forthcoming. But there is satisfactory proof that it did at one time exist. The case of Brojo-mohan's adoption by Chunder-money is very different from that of Jeebun-krishta by Rookinny. For whereas Rookinny did not adopt for more than 30 years after her husband's death, and no one save herself ever saw her authority to adopt; Chunder-money adopted immediately after her husband's death, and has produced witnesses who place it beyond doubt that Radha-kaunt did direct his wife to adopt. It may be that after his adoption, Brojo-mohan left his adopted mother's house for a month or two, but even if he did, that does not affect the validity of his adoption. He lived all along in the family till he died, and he was treated by all the members of the family as a son. There is sufficient proof of the performance of the necessary ceremonies, for, as I have already said, when the Court is satisfied of the power, comparatively light proof of the ceremonies will suffice, when many years have passed and the person whose adoption is questioned has always been recognized as a son and died in the belief that he was so.

August 19th, 22nd, 23rd and 24th, 1864. Corrston's Reports of cases in High Court, Vol. I. page 42.
Purna-nund Bhuttacharjee, guardian of Kishen-nauth Chowdhooree minor, Appellant, versus Wooma-kaunt Lahoree and others, Respondents.

IV. Gunga-narain Chowdhooree, a zeminder, died in 1183 B. S., leaving a son Hur-nauth Chowdhooree, and a daughter Gourree Debea, mother of the respondents. Hur-nauth Chowdhooree died childless, on the 3d of Cheyt 1199 B. S. but previous to his death he executed two deeds conveying to his wife Gunga Debea, a limited permission to adopt a son. The first document was an anoomutty-putter, to the following effect: "This deed is addressed to the fortunate Gunga Debea. I am in so weak a state that my life is very uncertain, and I have no son; I therefore authorize you, should I be removed, (which God avert,) to adopt Shib-kishore Surma, Second son of Joogul-kishore Roy, in order that he may perform my funeral rites and preside over the estate. I have written to Joogul-kishore on the subject, but should he refuse to give his consent, you may adopt the son of some other Brahmín. Such adopted son shall in that case perform my funeral rites and inherit my estate." Below the signature was written, "I have authorised her to adopt a son." The second document was confirmatory of the former. It also was addressed to Gunga Debea and ran thus: "On the 23rd of Phalgun, in consideration of my being childless and in a dangerous state of health, I gave you authority to adopt Shib-kishore Roy, and wrote to Joogul-kishore to authorise the gift of his son. Since that, Joogul-kishore has deputed his wife, Ruderanee Debea, to give his son in adoption. Accordingly adopt him as my son. If I recover, I will myself perform the prescribed rites; but if it should please God to remove me, I hereby empower you to perform the ceremonies. The investiture of the Brahmical thread must be performed by Joogul-kishore, or Hur-kishore. Shib-kishore will be the lawful possessor of all my wealth." On the day following the execution of this deed, Hur-nauth died; and Shib-kishore was adopted by Gunga Debea and obtained undisputed possession of the zemindaree. He died childless on the 15th of Bysauk 1213, and Gunga-Debea then held the estate. In 1227 she went to Moorshedabad to bathe in the Ganges, and there suddenly died of the cholera morbus on the 25th of Cheyt. On the day previous, however, she was said to have adopted Kishen-nath Chowdhooree, under the general authority given by her husband. The
collector and Board of Revenue recognised the adoption; and the Respondents brought their suit to set it aside in the Provincial Court of Dacca, against Kishen-nauth Chowdhooree, and his abettors, Cally-mohun Thakoor, Ram-nauth Moonshee, Sheo-nauth Moonshee. They claimed the estate as the natural heirs of Hur-nauth Chowdhooree. On the 15th of March 1825, Mr. C. W. Steer, fourth Judge in the Provincial Court, gave judgment in the case. He considered the widow incompetent to adopt, because the Anoomuttee-puter gave her authority in a specific case, making the general authority contingent on its non-performance; so that, as soon as she had adopted Shib-kishore, the authority granted to her was annulled; because the confirmatory deed, under date the 2nd of Cheyt, clearly restricted the authority to Shib-kishore. On these grounds possession of the estate was decreed to the plaintiffs, as legal heirs to Hur-nauth, deceased.

Against this decision, Kishen-nauth appealed to the Sudder Dewanny Adawlut; and on the 18th of November the case came to a hearing before Mr. R. H. Rattray. He was of opinion that the adoption of Kishen-nauth was not proved, but that the whole transaction was a fraud of Cally-mohun Thakoor and his associates; and that, even if it had been proved, it could be of no benefit to the appellant, inasmuch as it was illegal without the sanction of her husband, which both from her own deposition in a former case, and Hur-nauth's paper produced in this, it was evident never was given, or intended to be given; that the power conferred by Hur-nauth was explicitly confined to the son of Joogul-kishore, Shib-kishore, or, if the father were unwilling to give his son in adoption, the son of some other Brahmin; that there was not a word in relation to repeated adoption at the widow's pleasure, in the event of casualty to the first adopted son; and that without a distinct permission, she could not of herself do that legally. On these grounds M. Rattray affirmed the decree of the Provincial Court, awarding possession of the estate to the Respondents.—18th of November 1828. S. D. A. R. Vol. IV. pp. 318, 319.

V. A Hindoo widow claimed a moiety of an ancestral estate as heir to her deceased husband, who had given her, as she alleged, an Anoomuttee-puter, which, however, she had never exercised. The Court, considering that the Anoomuttee-puter was altogether unworthy of credit, as no mention has been made of it by the widow for twenty-two
years after her husband's death, dismissed the claim of the widow, and declared that she was only entitled to maintenance, her husband having died during the life-time of his father and brothers. *Maat Hempluta Chowdhooraeen versus Puddo-munee Chowdhooraeen.* 14th Feb. 1825. S. D. A. R. Vol. IV. p. 19.

*Bullab-kaunt Chowdhree, Appellant, versus Kishen-pria Dassea Chowdrain, guardian of Nubkaunt Chowdhree, Respondent.*

VI. This case was referred to the principal Sudder Ameen of the district, who put the following question to the Pandit of the Zillah Court:

"A Hindoo householder, of the Telec caste, was possessed of property, ancestral and self-acquired. He died childless after an illness of ten or twelve days. One day, when he was in a state of insensibility, the wife of his father's brother, who resided in the same house, and his own wife, brought to him a child of the same family, in the presence of some Brahmin priests, his gooroo, people of the same caste, and a few of the neighbours, and addressed him: 'You wished to adopt a son, now receive him.' After calling to him two or three times, he answered 'yes.' The uncle's wife then took the hand of the sick man,—the father of the boy to be adopted took his son's hand, and put it into that of the sick man. A few hours after, the sick man died. His obsequies were performed by the son thus adopted, to which no objection was made by the defendant. The adopted son entered upon and held possession of the estate of the deceased for three or four months, and lived with his widow. The widow died five months after her husband. On this the defendant, who is the cousin of the deceased on the father's side, (the defendant and deceased being the sons of whole brothers,) took possession of the property. The widow of the deceased's uncle has sued for recovery of possession, in her own right as heir, and as guardian of the adopted son, still a minor. The boy is admitted to have been upwards of five years old at the time of his adoption. The defendant claims as heir at law to his deceased uncle. State who is entitled to the property of the deceased? and whether the adoption, as above particularised, is legal or not?"
The Pāṇḍit replied to the following purport: "If any Sapinda (or kinsman connected by an oblation of food) bring his own son, and give him into the hand of a childless man, in the presence of Brahmin priests, gooroo, and others, it is the declaration of the sages that, if the party adopting is conscious of what he is doing, the adoption is legal. It appears from the question that the adopter died a few hours after making the adoption; and although the burnt sacrifice prescribed in cases of Dattaca adoption, was not observed, that does not invalidate the adoption, as the sacrifice is only essential to the conditions of legal adoption among Brahmins, Kshetriyas, and Voishyas, to neither of which did the adopting party belong. The object of adopting a son is that he might offer the funeral cake to his adopting father, grandfather, and great grandfather. As, in the present instance, the son adopted has performed the funeral obsequies for his father, and will continue to do so, his adoption is clearly valid, and he is unquestionably entitled to the estate of his adopting father."

The principal Sudder Ameen, observing that the Pāṇḍit's Vyavasthā contained no reply to the question of the right of succession of the plaintiff to any portion of the estate of the deceased, put a further question to him, desiring an opinion on that point. To which the Pāṇḍit replied that, as there was an adopted son, the widow of the uncle of the deceased did not succeed to any portion of the estate.

The principal Sudder Ameen, with reference to the Vyavasthā, gave judgment in favor of the adopted son. The defendant appealed to the Zillah Judge, who confirmed the decree of the Principal Sudder Ameen.

The defendant then applied to the Sudder Dewauny Adawlut for permission to file a special appeal, which was granted.

The case was first laid before Mr. Hardinge, who put the following question to the Pāṇḍit of the Sudder Court.

1st. If one ask a person, who is dangerously ill and insensible, whether he will adopt a son, at the same time taking a child to him, and the sick man reply, merely by a single word, in the affirmative, is such adoption legal?
2nd. Is adoption restricted to any particular age by the Shasters? and if so, is the law respecting the particular age, applicable to all, or only to some of the Hindoo tribes?

The pandit replied to the first question that an adoption made under the circumstances stated in the question was illegal, because the conditions requisite to the validity of an adoption could not be performed by a person in the state mentioned; and without the performance of those conditions, the adoption could not be legal.

Authority.—Vasiṣṭha in the Dattaka-mimāṃsā, "One about to adopt a son should invite his kinsmen and make representation to the king, and offer a burnt sacrifice, and thus make the adoption."

To the 2nd question the pandit replied that the period fixed for adoption, with respect to the three superior tribes, Brahmins, Kshetriyas and Voisvas, was prior to their investiture with the respective cords; and with respect to Shudras, to their contracting marriage.

 Authorities.—

1. Dattaka-mimāṃsā. "The ceremony of tonsure (Chudadya) and other rites of initiation being performed under his own family name, sons given may be considered as issue; else they are termed slaves."

2. Dattaka-mimāṃsā. "By the compound epithet 'Chudadya,' rites commencing with that of investiture for persons of the superior tribes would be suggested, but for Shudras, marriage, and so forth, implied."

Mr. Hardinge, adverting to the replies of the pandit, was of opinion that the plaintiff had completely failed to establish that the adoption of Nubkaunt by Gowree-kaunt was a legal transaction, and proposed to reverse the decrees of the lower courts, and dismiss the claim.

522. The father of several sons may of his own authority, and the mother of several sons may with the assent of her husband, give a son in adoption to a person, who is of the same class or caste, destitute of a son, son’s son, and son’s grandson in the male line, and not a prohibited relation.*

Authority. I. He is called a son given, whom his father, or mother, affectionately gives as a son, being alike (a,) and in a time of distress (i,) conferring the gift with water.—Mānu. D. Ch. Sect. I. § 12.

II. (a) ‘Alike’] Belonging to the same class.—In fact, the construction of the word ‘alike’ (Sadrisha) in Mānu’s text, as signifying of the same class is only proper; for, elsewhere, the participating, as an heir, of such adopted son, is shown: and the participating in the inheritance, of one unequal in class, is impossible.† Thus Shounakas declares: “If one of a different class, should, however, in any case have been, adopted as a son, he should not make him the participator of a share: this is the doctrine of Shounaka.”†—Yāṣka explicitly declares this: “A person of the same class must be adopted as a son. Such a son performs the oblations, and takes the estate; in default of him, one different in class, who is regarded merely as prolonging the line. He receives food and raiment only, from the person succeeding to the estate.”†—Ibid. § 13, 15, 16.

III. Accordingly, Vṛiddha Goutama forbids the participation, in inheritance, of one not of the same tribe, thus,—“Or should one of a different class be taken as a son, in any instance, let him (the adopter)

---

† In the present (kali) age, the marriage with a damsel of a different class having been prohibited, and consequently the production of a son in the womb of such a wife, the adoption of a son of a different class, not to mention his disinherition, if ever adopted, must, a fortiori, be concluded to have been prohibited: such adoption is moreover contrary to custom, which itself is transcendant law, and supersedes the general maxims of the law. See ante pp. 14, 15, & 40.
not make him a participator of a share: this is the doctrine of SOUNAKA."—D. Mim. Sect. II. § 21.

IV. Hence, it is established, that one of a different class cannot be adopted as a son.—Ibid. § 22.

(i) "In a time of distress." [The adopter being destitute of male issue.*—D. Ch. Sect. I. § 13.

V. "By no man, having an only son, (eka-puttra) is the gift of a son to be ever made. By a man having several sons, (bahu-puttra,) such gift is to be made on account of difficulty, (pra-yatnatas)"—SOUNAKA. He, who has one son only, is 'eka-puttra,' or one having an only son: by such a one, the gift of that son must not be made: for, a text of VASHISHTHA declares: "an only son, let no man give, &c." Since the word 'gift' means the establishing another's property, after the previous extinction of one's own; and another's property cannot be established without his acceptance; the author (SOUNAKA) implies this also, in his text in question. Therefore, a prohibition likewise against acceptance, is established, by that very text. Accordingly VASHISHTHA: "an only son, let no man give, or accept, &c." To this he subjoins a reason, "For, he is [destined] to continue the line of his ancestors."† His being intended for lineage, being thus

* The author of the Dattaka-mindaṇḍa explains the phrase "in a time of distress" as signifying also in a famine, and so forth, thus: "During distress." In a famine, and so forth: should the gift be made, no distress existing, the giver commits a sin, on account of the prohibition, "otherwise he must not attempt the same." Or the term 'pratyatnata' may signify—'on account of difficulty of the adopter,' 'During distress;' that is, when destitute of male issue: on account of the text of Atri, commencing:—"By a man destitute of a son only, must a substitute for the same always be adopted, &c." and it is thus interpreted, even by APARĀKA, and in the Chandrika. During distress, that is,—the adopter having no son." (D. Mim. Sect IV. § 20, 21.) The interpretation of the Dattaka-chandrika is alone accepted and used in Bengal.

† Let no man accept (an only son) because he should not do that whereby the family (of the natural father) becomes extinct: but this does not invalidate the adoption of such a son (actually) given to him.—Coleb. Dig. Vol. III. p. 243.

VASHISHTHA, Dutt. Nir., and MANU. Ibid; but this is an injunction rather against the giving than the receiving an only or elder son in adoption, and the transfer having been once made, it cannot be annulled. This seems but reasonable, considering that the adoption having once been made, the boy ipso facto loses all claim to the property of his natural family. See Bombay Reports, Case of Huebut Roy versus Govind-Rao. Vol. II. page 75.—MACN. H. L. Vol. I. p. 67.
VYAVASTHA-DARPANA. 823

ordained; in the gift of an only son the offence of extinction of lineage is implied. Now, this is incurred by both the giver and adopter also. For the [reason in question] is subjoined, after both [verbs: viz, give and accept.] D. Mīm. Sect, IV. §1—4.

VII. Next, the author replies to the question,—By whom is a son to be given? "By one having several sons. He who has several sons. is ‘bahu-putra,’ or ‘one having several sons.’ "By no man having an only son." From this prohibition, the gift, by one having two sons, being inferable; this part of the text ("By one having several sons," &c.) is subjoined to prohibit the same, by one having two sons also. For, the speech of Shantanu to Bhīṣma expresses: "He who has only one son, is considered by me, as one destitute of male issue, oh! descendant of Kuru, "One, who has only one eye, is as one destitute of both: should his only eye be lost, he is absolutely blind."—Ibid. § 7, 8.

VIII. The author, apprehending an extinction of lineage, in case of the gift of a son, by one, even having two sons, says: "by one having several sons, such gift is to be anxiously made."—D. Ch. Sect. I. § 29, 30.

But—

Vyavastha. 523. Though prohibited by the sages and Digest-writers, the gift of a son by one having two sons is seen in practice, and it is not declared invalid by the courts of justice.*

* It has already been observed, that a man who has a son, son’s son, or son’s grandson, is not competent to adopt a son: and it would seem to follow, by analogy, that if a man has a son, and the son of an elder son deceased, he may give the former away in adoption, because he cannot be considered as the father of one son only; the latter also bearing towards him the relation of a son to all intents and purposes, and supplying the place of the elder one. In the Dattaka-mīmāṃsā, there is a prohibition against the gift of a son, where there are only two, but the precept is merely dissuasive, and not peremptory. Maca. H. L. Vol. I. p. 77.

In this case the dissuasive precept against giving one of two sons, would apply, but the adoption would nevertheless be valid. Ibid. Note.

In strictness, to enable a man to give a son to be adopted, it is not sufficient that he have more than one; he should have several; since if, having only two, he part with one, the death of the remaining one, leaving him destitute, would be a contingency not to be risked. It does not however appear, that this ever prevailed as a rule. If therefore he have two, he may relinquish the younger.—Str. H. L. Vol. I. p. 73.
Authority. I. "By a man having several sons." Since the masculine gender is here used, the gift of a son, by a woman, is prohibited. Accordingly, VASISHTHA says: "Let not a woman either give or accept a son;"—and [her] independency is not ordained. With the husband's assent a woman also is competent. Accordingly, VASISHTHA adds: "unless with the assent of her husband."—"Whom his mother, or his father, gives (dadyāt,'); "his mother or father give (dadyātām :')" As, for what is contained in these passages, as intimating the equality of the father and mother, that is merely with reference to the assent of the husband.—D. Mīm Sect. IV. § 9—11.

II. The husband, singly even and independent of his wife, is competent to give a son: for in the two passages cited (in § 11) the father is mentioned singly, and unassociated with the mother, and there is this reason of BOUDHĀYANA found: "From the predominance of the virile seed, sons are regarded even as not produced of the womb." In the Bhārata also, [a reason is found.] "The mother is the fosterer: the son is of the father: he is (as it were) that very person, by whom produced." A passage of revealed law is likewise (confirmatory:) "Himself is truly born a son."—Ibid. § 13.

III. Conformably, in this passage, ("the mother or father give,'") MANU, intending, from her dependance on the assent of her husband, the inferiority of the mother (as the agent, in the gift of a son:)—the mediocritiy of the husband, on account of his independance of the wife; and the pre-eminence of both united, from their being equally parents, propounds each position (in order last.) It must not be argued, that this is merely a single sentence, on account of the only verb being used in the dual number: for, the disjunction in the middle (by the particle, 'or') would be inconsistent. Therefore, the passage in question, comprises three positions. Accordingly, the chief of the saints, in this passage, "whom his mother, or his father gives," has used the verb in the singular number, even though referring to each (nominative.)—Ibid. § 15—17.

IV. The mention of gift, by the joint act of the father and mother, is intended to show the means of effecting a donation productive of no immoral consequence; but the gift made by the man alone is valid.—Coleb. Dig. Vol. III. p. 244.
V. The husband has the primary right over his son, as appears from the text: ‘they consider the male issue of a woman as the son of her lord,’ &c. ‘then only is a man perfect, when he consists of (three persons united,) his wife, himself and his son,’ &c.; but the wife, being dependent on him, has a secondary property, because the son was produced from the united co-operation of her blood, (with the seminal juices of the father,) and because she bore the child in her womb. Hence the gift made by a dependant person, without the assent of the principal owner, is void.—Coleb. Dig. Vol. III. p. 244.

Vyavastha 524. A woman may, however, give a son of hers in adoption, without her husband's assent, if he be dead or have emigrated.*

Reason. For it is then impossible to obtain his assent.

But, by a woman, the gift may be made, with her husband's sanction, if he be alive; or even without it, if he be dead, have emigrated, or entered a religious order.—Now, if there be no prohibition even, there is assent, on account of the maxim; “The intention of another, not prohibited, is sanctioned.”—D. Ch. Sect. I. § 31, 32.

Vyavastha 525. No relation other than the father and mother can give a boy in adoption.

Musst. TARA-MUNEE DEBIA, APPELLANT, VERSUS DEB-NARAEN AND BISHEN-PURSAUD, RESPONDENTS.

Case bearing on the vyavasthas Nos. 522 & 525.

This was an action brought by Deb-naraen Roy against the appellant. The plaintiff's claim stated, that of Inder-naraen Roy, there had been three sons,—Chunder-naraen Roy, Becha-naraen Roy, and Keerut-naraen Roy, whose representatives were Raj-naraen Roy, Musst. Surda (Saroda) Debia, and Loke-naraen Roy; that Raj-naraen Roy died in 1198 B. S., leaving his wife, the defendant, authorised to adopt a son; that she had accordingly, in 1205 B. S., adopted the present plaintiff then five years old, conformably to the manner directed in the Shastras,

* According to the Dattaka-mandap, a woman whose husband is dead, and not one whose husband has emigrated, can give a son of hers for adoption. Vide D. M's. Sect. IV. § 12, and Macn. B. L. Vol. I. p. 66.
and, investing him with the Brahmanical thread, had set aside for his support the Mouzah of Rajnugur, and afterwards solemnized his marriage.

The defendant replied, that she had never received permission from her husband to make an adoption, either orally or by writing, but that, when Surbeswury had brought an action against her, Purmanund, a Brahmin, her family Gooroo and her agent, had advised her to support her case by the expedient of an adoption, and, taking her with him to Dacca, had adopted the plaintiff (whose father was dead,) contrary to all legal rules, from his brother Damoodur, without the attendance of her (the defendant,) her relatives, and the family priest (poorohit;) that it was clear that one brother possessed no power to give away another brother in adoption; that although by the advice of the aforesaid Brahmin she had given the mouzah of Rajnugur for plaintiff's maintenance, still that property remained, though in the plaintiff's name, in her (the defendant's) hands, and on the admission that, at the time when the plaintiff was in friendly terms with her (the defendant,) she had defrayed the expenses of his marriage, &c., still such payments could not substantiate in any way his claim of adoption; that the plaintiff had, in the month of Poos 1214 B. S., written an agreement to the effect that she, the defendant, should be considered and professed to be owner of the land during her life-time, and after her death the plaintiff should take her place, and that should the plaintiff recede from his agreement by bringing any action for the land during the defendant's life-time, his claim to any interest in it should be cancelled, whether of inheritance or otherwise; and that, lastly, the present action was a direct infraction of the conditions of that agreement.

The decree of the second Judge of the Provincial Court recited that the defendant had no claim beyond that of mere maintenance.

The defendant, dissatisfied with this decision, appealed to the Sudder Dewanny Adawlut. A petition of Goluk-narren Roy was entered and ordered to be filed on the 2nd of September 1823, the contents of which were detailed in the judgment given by the Second Judge of the Court (C. Smith,) and which was to the following effect: That on an inspection of the proceedings of all the suits connected
with the estate, part of which was now contested, as well as of those immediately relating to the impending case, it appeared that the claim of the respondent must be held void. For the agreement bearing date 23rd of Poos 1214 B. S., was established by abundant evidence; and on the admission of the validity of that agreement, even although the adoption had been strictly legal, the respondent could have no claim during the appellant’s life-time, except for the sufficiencies of maintenance; but that the alleged adoption did not seem to the Court to be valid, because it was proved by the evidence that it had been made after the death of the respondent’s father, neither of the parents of the respondent, but only his brother, having given him away. That, moreover, the consent of her husband was requisite to legalize an adoption made by his wife; and it had not been shown in the present case that any such consent had been given. Certainly, the giving of it could not be considered established by the simple assertion of the appellant at the time of the adoption, that she had received it; the more so, as her subsequent statements induced a suspicion of her having had an interested purpose in making such an assertion; that lastly, the consent of others who had a claim to the land was necessary to confirm the adoption;—others, such as Goluknaraen Roy, who had stated in his petition, that in default of the adoption the estate belonged to him.

The case coming to a hearing next before the third Judge of the Court (J. Shakespear,) on the 8th, 14th and 15th of January 1824, the following questions were put to the pandits of the Court, and answers received.

Question 1st. If a woman, asserting herself to have received permission from her husband to adopt a son, shall make such adoption, and the granting of such permission be not supported by any other proof than that assertion affords, is the adoption legal?

Answer 1st.—Such adoption is not legal.

Question 2nd.—If an adopted son executes an agreement of the following purport, that his mother is to remain in possession of the property during her life-time, and he is to inherit after her only on the following conditions—that should any serious difference occur between his mother and himself, he is to lose all his rights, and his adoption to be held void; does such a document on the occurrence of such difference confer any legal right on the mother?
Answer 2nd.—It does confer such right, because the proprietors of any possessions may dispose of them as they please.

A reference was at the same time made by the Court to the Judge of the city of Dacca, forwarding a copy of the engagement originally made by Deb-naraen Roy, and directing that copy to be compared with the original, as entered in the records of the registry, and the oral evidence of as many of the witnesses to it as might be living to be taken and transmitted to the Court. It was also desired, that the answers of those witnesses to any question proposed by Golak-naraen should be included in the official returns.

On the receipt of these a definitive judgment was given on the 10th of July 1824, reciting that there existed nothing like sufficient proof to establish the fact of permission to adopt having been given to the appellant by her husband. Therefore, and for the reasons stated in the decree of the second Judge, it was ordered that the decision of the Provincial Court of Dacca should be reversed, and judgment be passed in favor of the appellant, with costs.—13th of July 1824, S. D. A. Rrep. Vol. III. pp. 387—390.

SECTION IV.—WHO CAN AND WHO CANNOT BE ADOPTED.

Vyavastha. 526. A boy who is of the same caste (a), who is not the only son of his father (i,) and not disqualified (u,) or a prohibited relation (e,) is eligible for adoption.*

(a) 'Of the same caste'—that is, being of the same special caste as the adopter.—It is not sufficient that the adopted be of the same general caste with the adopter, that is, one of the four general castes or classes (the Brahman, Kshatriya, Voishya, and Shudra;) but he and the adopter must be of the same special caste which is derived from any one (or two) of the general castes: then indeed is the adopted of the same caste with the adopter, and his adoption valid.†

† See ante, p. 821; D. Mím. Sect. II. § 21; D. Ch. Sect. I. § 13, 15, 16; Macn. Vol. I. pp. 73, 75.
though all of the present tribes are not recognised in the law, yet as they are based upon custom, they must *a fortiori* be held as recognised by the law also, custom being the transcendent law and superseding the general maxims of the law.*—Consequently, if the adopter be of any derivative caste formed and founded upon the custom of his country, the son to be adopted by him should also be of the same identical caste, and not of any other caste, (though, such latter caste may have been derived from the same general caste.*)

(i) *Not the only son*—that is, the boy to be adopted is to be one of many sons of his father, because, the father of an only son is prohibited to give his son in adoption, and because, a father who has several sons being alone allowed to give a son of his for adoption, a father of two sons is also prohibited to make a gift of one of his sons.†

But,—

**Vyavastha.** 527. Although a father having two sons is prohibited to give one son in adoption, yet the adoption of a boy having an only brother is seen in practice; and it is not declared invalid by the courts of justice. §

By parity of reasoning,—

**Vyavastha.** 528. The younger of two sons, who has not his elder brother, but has his son, in existence, may also be adopted.¶

**Reason.** As in that case, he is not without a brother, his brother's son supplying the place of the brother deceased, in consequence of the term *'son'* meaning issue as far as the great grandson in the male line.¶

**Vyavastha.** 529. As an only son, so also an eldest son must not be given in adoption, although several sons exist. (See, however, the effects of adoption.)

An only son must not be given (or accepted.) For **Vashishta ordains:** 'Let no man give or accept an only son.' Nor, though a

---

* See ante, p. 314. † See the section treating of the different castes.
numerous progeny exist, should an eldest son be given: for he chiefly fulfills the office of a son; as is shown by the text: "By the eldest son, as soon as born, a man becomes the father of male issue."—Mitakshara, Ch. I. Sect. XI. § 11 & 12, p. 310.

REMARK. But according to the modern lawyers, a brotherless boy, be he the eldest, middle, or youngest son of his father, may be adopted, even though he have no brother's son in existence; inasmuch as in the following and other texts: "An only son, let no one give or accept; for he is to continue the line of his ancestors," &c., the gift of an only son is prohibited in the apprehension of extinction of the giver's race, and discontinuance of presentation of the oblations of food and libations of water; and the receiver too is prohibited to accept such son because he ought not to do such injury to the giver;—so this cannot be construed to invalidate the adoption; all that can be concluded from such prohibition is, that the giver as well as the receiver would in so doing commit a sinful act. In like manner, the prohibition against giving an eldest son in adoption being grounded on the deprivation of the benefit derivable from the rites performed by the son, the gift cannot be void, but the giver would commit a greater sin in giving his eldest son in adoption,* as said in the Dattaka-nirnaya.

There is, however, no prohibition against adopting an only son in the Dvayamushyayana form; on the contrary, his adoption in that form is recognized in the law itself.—See the section treating of the Dvayamushyayana adoption.

(u) 'Not disqualified'—that is, the boy to be adopted must be exempt from any disqualification which might prevent him from fulfilling the purpose of adoption.†

* An eldest son is forbidden to be given in adoption; but some authorities make exception to this.—Str. H. L. Vol. II. p. 81. See Macn, H. L. Vol. I. pp. 67 & 77; and anse, pp. 821-824.

Such are, in this respect, the restrictions inculcated, but not always enforced; since, as in other instances, so with regard to both these prohibitions respecting an eldest and an only son, where they most strictly apply, they are directory only; and an adoption of either, however blamable in the giver, would nevertheless, to every legal purpose, be good; according to the maxim of the civil law, prevailing perhaps in no code more than in that of the Hindus, 'factum valet quod fieri non debuit.'—Str. H. L. Vol. I. p. 75.

† It is an obvious inference, that the person selected should be exempt from any disqualification, which might prevent him from fulfilling the purpose of the adoption.—Sutherland's Synopsis, Head second, § 3.
VYAVASTHĀ-DARPANA.

530. The boy with whose mother the adopter was not prohibited to contract a marriage, or to have carnal knowledge of, is eligible for adoption.*

"Having taken him by both hands, with the recitation of the prayer, commencing,—’Devasya-twā,’ &c.; having inaudibly repeated the mystical invocation—’Anghādanghā’ &c.†; having kissed the for head of the child; having adorned with clothes, and so forth, the boy bearing the reflection of a son."—D. Ch. Sect. II, § 7. D. Mim. Sect. V § 15.

Authority. "Reflection of a son."

—The resemblance of a son, or in other words,—the capability to have been begotten by the adopter, through appointment, and so forth.—D. Ch. Sect. II, § 8.

"The reflection of a son."

—The resemblance of a son,—and that is, the capability to have sprung from (the adopter) himself, through an appointment (to raise issue on another’s wife,) and so forth. In the same manner as in the text, of Grihya-parishishta on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, (one, who, if begotten by the adopter, would have been the son of) a prohibited connection, must be excepted; in other words, a person is to be adopted, of whose mother the adopter might have carnal knowledge.—Now, prohibited connection is the unfitness (of the son proposed to be adopted) to have been begotten by the individual himself, through appointment (to raise issue on the wife of another.)—The mutual relation between a couple, being analogous to the

* That the party adopted should neither be the only nor the eldest son, (but see ante, p. 822,) nor an elder relation, such as the paternal or the maternal uncle; that he should be of the same tribe as the adopting party; that he should not be the son of one whom the adopter could not have married such as sister’s son or daughter’s son. This last rule, however, applies only to the three superior classes, and does not extend to Shakdras.—Macn. H. L. Vol. I. pp. 65,67. See Str. H. L. Vol. I p. 71, et sequae.

The first and fundamental principal is, that the person proposed to be adopted be one, who, by a legal marriage with his mother, might have been the legitimate son of the adopter. By the operation of this rule, a sister’s son, and the offspring of other females whom the adopter could not have espoused, and one of a different class, are excluded from adoption. In the present age, marriage with one unequal in class is prohibited.—Sutherland’s Synopsis, Head Second. § 1.

† See post. p. 869, et sequae.
one being the father or mother of the other, connection is forbidden; as for instance,—the daughter of the wife's sister, and the sister of the paternal uncle's wife. The meaning of the text is this, where the relation of the couple, that is, of the bride and bridegroom, bears analogy to that of father or mother: if the bridegroom be, as it were father of the bride, or the bride stand in the light of mother to the bridegroom, such a marriage is a prohibited connection.—D. Mim. Sec. V § 16, 20, 18 19.

Vyavastha. 531. Accordingly, the brother, paternal and maternal uncles, daughter's son, and sister's son,* are excluded. The adoption of a brother's son by a sister or a sister's son by a brother could not also take place.—Ibid. Sect. II § 34 and Sect. V § 17.

Reason. For, they bear not resemblance to a son.—Ibid.

Authority. The above rule is not, however, applicable to the Shádras,†—because, having relation solely to the regenerated classes, it excludes the Shádras, and because, in the text subjoined, the adoption of a sister's son or daughter's son by a Shádra is declared to be lawful. Therefore,—

Vyavastha. 532. A sister's son or a daughter's son may be adopted by a Shádra.†

Authority. "Of Kshatriyas, in their own class positively: and (on default of a sapinda, a kinsman) even in the general family, following the same primitive spiritual guide (Guru:) of Voishyas, from amongst those of the Voishya class (Voishya-játiṣu:) of Shádras, from amongst those of the Shádra class. Of all, and the tribes likewise, (in their own) classes only; and not otherwise. But a daughter's son, and the sister's son, are affiliated by Shádras. For the three superior tribes, a sister's son is nowhere (mentioned as) a son." Shounaka.—D. Mim. Sect. II. § 74; and D. Ch. Sect. I. § 17.

On default of a sapinda, a kinsman, "and even in the general family following the same primitive spiritual guide." Since there are no distinct and peculiar general families of the (primeval) Kshatriyas, the

---

* The expression 'sister's son' is inclusive of the son of a brother also. Hence this meaning is deduced, that a brother's son must not be adopted by a sister.—D. Mim. Sect. II § 33.

primitive spiritual guide is mentioned, (to particularise the class from which the adoption is to be made.)—Accordingly, on account of his remote connection, on failure of the sapinda, a kinsman, one belonging to the same general family, is ordained. In respect to him also, the clause, ‘in their own classes, &c.,’ is likewise applicable; on account of the conclusion of the passage ‘of all, &c.’ And hence, a near or distant relation of a different class is precluded* (from being adopted.)—D. Mim. Sect. II. § 76,77.

‘Voishya jātishu’] This must be rendered,—from amongst those of the Voishya class,—as if jātishu had been used: for ‘jāta’ or ‘jāti’ (of which the words are severally inflections,) are recited in the dictionary, as synonyms, signifying ‘class or sort.’—The clause too, (‘and even in the general family, following the same primitive spiritual guide,’)*—is here likewise understood; on account of the text commencing (He specifies) the general families of Kshatriyas and Voishyas, are distinguished by following the same primitive spiritual guide; because the passage, the initial words of which are ‘who are adopted from those of his own general family, &c, &c.’ is common to the three tribes. It is equally the case in this instance also, that, on default of a sapinda kinsman, one of the general family, following the same primitive spiritual guide, (is to be adopted.)—D. Mim. Sect. II.§78,79.

“From amongst those of the shūdra class.”] Here also propinquity as before, (constitutes a restriction;) and the clause, (‘and even in

* “Even in the general family, following the same primitive spiritual guide.”—Since there are no distinct and peculiar general families of (primitive) Kshatriyas, the general family following the same primitive guide is specified; for it is declared, in the passage subjoined, that one of the tribes in question participates, in such general families: ‘He specifies the general families of Kshatriyas and Voishyas as distinguished by following the same primitive spiritual guide.—D. Ch. Sect. I. § 18.

Jamadagni, Bharadvaja, Vishvamitra, Atri, Gotama, Vasishtha, and Kashyapa, are founders of gotras. The offspring of each of those sants respectively belong to the gotra of their ancestor. At first the Brāhmaṇas alone having gotras, the Kshatriya and other tribes originally had no gotra.

Since there are no distinct and peculiar general families of the (primeval) Kshatriyas.] The general families of Kshatriyas and Voishyas are distinguished by the primitive saint or patriarch hereditarily acknowledged in the family. This is not the case with Brāhmaṇas—

the gotra or general family of whom is determined by lineal descent, from the same particular saint—D. Mim. note to § 76, Sect. II.
Authority. The adoption of a son, by any Bráhmana, must be made from amongst sapinda, or kinsmen, connected by an oblation of food: or, on failure of these, a sapinda, or one not so connected; otherwise let him not adopt.—ShouNaka. See D. Ch. Sect. I. § 10. and D. Mim. Sect. II. § 2.

‘From amongst the sapindas’—that is, from among such kinsmen, extending to the seventh degree inclusive.* And the term being used in its general sense, it follows—from among such kinsmen belonging to the same or different general family (gotra.)—D. Mim. Sect. II. § 3.

Here, since it is mentioned generally, ‘from amongst sapindas,’ it is meant from such both of the same, or a different general family.—D. Ch. Sect. I. § 10.

Of what has preceded, this is the abstract meaning:—(Ibid.)

Vyavastha. 534. The sapinda belonging to the same general family is the first (in rank:) on failure of him, such kinsman of a different general family.—D. Mim. Sect. II. § 11.

Vyavastha. 535. If there be a sapinda of a different gotra (general family,) and a person of the same gotra, but not a sapinda, the former is first in rank.†

Authority. Although the sapinda of a different family and a person of the same family, but not a ‘sapinda,’ are both equal, with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim from connection as ‘sapinda’ is preferable to him claiming by family, and hence it is that, though of a different family,

---

* ‘Kinsmen extending to the seventh degree inclusive’—that is, seven degrees or generations from the great grandson to the paternal great grandfather inclusive, and the persons who present to them the oblations of food in the Purāṇas (see ante, p 20.) The said seven persons and their sons, sons’ sons, and great grandsons are sapotra sapinda, or kinsmen of the same general family, and the grandsons in the female line of those seven persons are sapindas of a different general family. See ante, pp. 303, 304.

† On default of a sapinda kinsman, one belonging to the same general family (gotra,) and, failing the latter, a person even of a different general family is to be adopted, Shákala declares this.—D. Ch. Sect. I. § 11.
a sapinda even from the family of the maternal grandfather must be adopted.—D. Mīm. Sect. II. § 12.

Vyavastha. 536. On default of a sapinda or kinsman connected by an oblation of food, one belonging to the same general family (gotra) is to be adopted.*

In every case, on default of a sapinda, one not such is to be adopted of this description,—

Vyavastha. 537. The kinsman allied by a libation of water (sodaka) to the fourteenth degree, being of the same general family, is the nearest; on failure of him, one not so allied, but of the same general family, to the twenty-first degree.—D. Mīm. Sect. II. § 13.

Vyavastha. 538. On defect of such also, one not belonging to the same general family, and not related as a ‘sapinda.’—Ibid. (See the last foot-note of the preceding page.)

Authority. That is declared by Shākala: "Let a regenerate man, being destitute of male issue, adopt, as a son, the offspring of a sapinda kinsman; or next in order, the son of one of the same general family (sagotra:) on defect of such, let him bring up one born in a different general family."—D. Mīm. Sect. II. § 14.

By the expression ‘sagotra,’ those allied by a libation of water (sodaka,) and belonging to the same general family, are included.—D. Mīm. Sect. II. § 14.

Now, in this text, the proximity (in order) of each successively, is particularly shown.—D. Mīm. Sect. II. § 14.

Vasishtha also propounds the same—"should take an unremote kinsman or near relation of a kinsman," &c. The construction of this passage is thus: He is an unremote kinsman, who is both a kinsman and in a near degree;—meaning, a near ‘sapinda.’ Now, propinquity is of two descriptions,—by belonging to the same general family and by the intervention of few degrees. Of those allied by propin-

* See ante, page 657.
quity, the 'sapinda' of the same general family, and removed by few degrees, is the principal; on default of him, a 'sapinda' of the same general family, though removed by many degrees; on failure of such, a 'sapinda' belonging to a different general family; on defect of this latter also, the near relation of a kinsman,—meaning, of a 'sapinda' kinsman, the near relation or 'sapinda' being one allied to the individual himself, by libations of water (sodaka), but not his 'sapinda'. Such is the import which is deduced.—D. Mīm. Sect. II. § 15, 16.

"Otherwise, let him not adopt."* By this, a given son, being other than a Brāhmaṇa, a Kshatriya, and so forth,—in short, of a different class, is excluded. This Manu declares: "He is called a son given, whom his father or mother affectionately gives as a son, being alike, and in a time of distress, confirming the gift with water."—D. Ch. Sect. I. § 12.

Vyavastha. 539. According to the above mentioned order, the nearest kinsman is the first in rank.

Therefore,—

Vyavastha. 540. If there be a son of a brother of the whole blood, he is eligible in preference to all.†

* Although, none other than such as are connected, as 'sapindas,' and not so, can exist still, since by this sequel of the text, ("of all, and the tribes likewise, in their own classes only, not otherwise,"), those, connected as sapindas, and not so, are qualified, as being of the same class, both sapindas, and those not such, who do not belong to the same class, are excluded [from being adopted.] For they might be inferred as a subordinate class, by the rule of logic, "What is not denied is admitted."—D. Mūs. Sect. II. § 20.

† Amongst near sapindas, (kinsmen of the same general family,) a brother's son only must be affiliated: and this doctrine is recognised also by Vīgīśānārāma: "By the position, that a brother's son only must be affiliated," it is meant, that the son of a whole brother only must be affiliated. Manu declares this:—"If one, among brothers of the whole blood (śaṅjaśa,) be possessed of male issue (putravāda,) Manu pronounces that they are all fathers of the same, by means of that son.'—Of the whole blood.] By this expression, it appears that this condition of adoptive fathers alluded to applies to those only, begotten by the same father, on the same mother, not such as are born of a different father or mother. Brothers.] From the masculine gender being used, it results, that brothers and sisters also, of the whole blood, are not reciprocally the adoptive parents of the son (of any one of them:) and this conclusion is confirmed by the mention of two terms (in that gender.) Vṛiddha Goutama declares the same:—"In the three superior tribes, a sister's son is no where (mentioned as) a son." The expression, a sister's son, is inclusive of the son of a brother also. Hence, this meaning is deduced, that a brother's son must not be adopted by a sister: for, brothers only are mentioned to be adoptive parents (in the text of Manu.)—D. Mīm. Sect. II. § 28—33.
Reason. Because by reason of his being the nearest of sapindas, he is the best of them all, and because he possesses the virtue of a son to his uncle.

Authority. In respect, however, to this subject, [it is to be observed, that,] where a brother's son may exist, amongst near kinsmen, he only is to be adopted. This Manu ordains: "If one among brothers of the whole blood, be possessed of male issue Manu pronounces that they all are fathers of the same, by means of that son." Vrihaspati [also:] "If there are several brothers, the sons of one man, by the same mother, on a son being born to one even of them, all of them are declared to be fathers of male issue." Under these two texts, if a brother's son is in any manner capable of being a substitute, it is inferred that another is not to be adopted.—D. Ch. Sect. I. § 20.

"Offspring must be produced: this precept is peremptory: in some manner, or another, it must be complied with."* Since the representation of the filial relation, here [contemplated], obtains in the brother's son; the effects thereof, viz. the oblation of the funeral cake, libation of water, and the like, and exemption from exclusion from heaven, would be accomplished [by his existence:] hence, there can be no occasion to proceed in the re-attainment of the same; consequently a brother's son, though unadopted, is filially related; in conformity with this text of Vrihat Parashara: "Let the nephew of a paternal uncle, destitute of male issue, be his son; he only should perform his obsequies, of the funeral repast, and of oblations of food and of water." Hence, a brother's son existing, no affiliation [of him, or another,] as a son given, and so forth, takes place."—This is not to be argued: for, althought, by reason of the nephew's possessing the representation of the filial relation, he may be the means of procuring exemption from exclusion from heaven, and so forth: still,—as the celebration of name and the due perpetuation of lineage would not be attained,—for the sake of the same, the constituting of him [an adopted son] is indispensable. Besides, the two texts in question do not prohibit, where a brother's son may exist, the consti-

* See the last foot note of the preceding page.
tuting of (him, or another,) a son given and so forth: but indicate, (as inherent in a nephew,) the virtue of a son, consisting in the capacity to perform the funeral repast, and so forth.—For, otherwise, a contradiction of the rule for the production of a kṣetrajas son, notwithstanding a brother’s son may exist, would follow; and since, by the text subjoined, the resemblance of son’s son obtains in a daughter’s son according to the reasoning recited, the non-adoption of a son given, and the rest, where a daughter’s son also might exist, would result. “By that male child, whom a daughter whether formally appointed or not, shall produce, from a husband of an equal class, the maternal grandfather becomes the grandsire of a son’s son: let that son give the funeral oblation, and possess the inheritance.”—D. Ch. Sect. I. § 21, 22.

But if, where even a brother’s son may exist, the constituting of (him, or another,) a son given, and so forth be legal; then though in the texts subjoined, the resemblance of the virtue of a son is shown to obtain in the son of a rival wife, where even such son existed, the affiliation of a son given, and so forth, by the step-mother might take place. Vṛihaspateśvara: “The same rule is also ordained, in respect to many wives of the same person.” Manu: “If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue.” (D. Ch. Sect. I. § 23.) Should this be objected, it is wrong. For, where the son of a rival wife exists, as the whole benefit even of a son is attained, no affiliation (by the step-mother, of him or another,) takes place.*

But, if a brother’s son exist, the affiliation of him only is indispensable; where there may be only one brother’s son, in that case the adoption cannot take place, on account of the text of Vasiṣṭha, which recites:—“An only son, let no man give, or accept.—For he is destined to prolong the line of his ancestors.”—Should this be alleged it is inaccurate. For the text, in question, is applicable to a case, other than that of the Dvayamushyāyaṇa, or son of two fathers—In case of the Dvayamushyāyaṇa, extinction of lineage, contemplated in the clause of the text containing the reason, would not take place.—D. Ch. Sect. I. § 27, 28.

Vyavastha. 541. The above rule of preferentially adopting the nearest kinsman is, however, to render such adoption a laudable one, and not to invalidate the adoption of a stranger, while there was available a nearer kinsman for the purpose.

* Where there is a brother's son, he should be selected for adoption in preference to all other individuals; but this is not universally indispensable, so as to invalidate the adoption of a stranger. In the case of Ooman Dutt, pauper, Appellant, versus Kotha Singh, it was held that, while a brother's son exists, the adoption of any other individual is illegal; and this is undoubtedly consonant to the doctrine contained in the Dattaka-Mindana, but it is controverted in the Dattaka-Chandrika. It would appear, however, that, according to the law of Bengal and elsewhere, where the doctrine of the latter authority, is chiefly followed, and where the doctrine of "factum volet" exists, a brother's son may be superseeded in favour of a stranger; and even in Benares, and the places where the Mindana principally obtains, and where a prohibitory rule has in most instances the effect of law, so as to invalidate an act done in contravention thereof, the adoption of a brother's son or other near relative is not essential, and the validity of an adoption actually made does not rest on the rigid observance of that rule of selection, the choice of him to be adopted being a matter of discretion. It may be held, then, that the injunction to adopt one's own sapinda, (a brother's son is the first,) and failing them, to adopt out of one's own gotra, is not essential, so as to invalidate the adoption in the event of departure from the rule.—Macn. H. L. Vol. I. pp. 68,69.

If duly authorised, the widow may no doubt, adopt, and is enjoined to give the preference to the nearest relation who is eligible. (See Dattaka-Mindana.) But the validity of an adoption actually made, does not rest on the rigid observance of that rule of selection; the choice of him to be adopted being a matter of discretion.—Colebrooke's remarks. See Str. H. L. Vol. II. p. 74.

The general law, however, which governs the choice of a son for adoption, is that the adopter may legally take him from his own, or from a different gotra; but he ought conscientiously to take him from his own; and, in preference, from his sapinda (or near kindred;) or, in default of these, from his samadnakas, or sakulyas (degrees of remote kindred.) If, however, a person choose to reverse the prescribed order, though he thereby contracts a sinful taint, he does not incur legal animadversion in consequence; and I doubt if it would be competent for the king, at the suit of any person whatever, to prevent the completion of the act;—certainly it could not be reversed, if once performed.—Remak by Mr. Ellis.—Ibid. pp. 74, 75.

It is not incumbent on a person to adopt the son of a brother, or other sapinda. The law merely states this as preferable, but without prescribing it; certainly it does not give to the sapinda any right to enforce such a preference, and the appellant could not, therefore, I am clear, maintain this action.—Ibid. p. 80.
VYAVASTHA-DARPANA.

Amitted legal opinions delivered in the several courts of judicature, and examined and approved of by Sir William Macnaghten.

A man had two sons, the eldest of whom died, and, subsequently to his death, the father gave his second son for adoption to brother of his wife. Excepting those sons, he had no other issue. In this case, is it legal to adopt such son?

R. Under the circumstances above stated, in default of a third son or a son’s son, the gift of the second son, after the death of the elder, must be considered as illegal.*

Macn. H. L. Vol. II. Ch. VI. Case 3, p. 178.

Is it allowable, according to the law as current in Behar, to adopt an only son?

R. According to the law as current in Behar, the adoption in the Dattaka form of an only child is illegal, as the gift and acceptance of an only son are

---

* According to the general prohibitory rule, “by him who has one son only, if of that son is not legal.” Kswera Bhata says: “The gift of a son by a man who has sons, must not be made;” for, having quoted the text of Sounaka, (“By a man having several sons, the gift of a son is to be made, on account of difficulty.”) he observes, on the death of the other son, the lineage would be extinct. This opinion is concurred in by the authors of the Vojayant and Dattaka-miniṣṭa: “By no man, having an only son, is the gift of a son to be ever made.” From this expression, the gift by one having sons, being inferable, this part of the text (“By one having several sons,” &c.) is subsumed to prohibit the same, by one having two sons also.”—It must be here remarked, the prohibition of giving a son by a father of two sons, does not extend to avoid the gift of a son, made by a person who has a son or a son’s son, or two grandsons, in addition to who is given; for, by parity of reasoning, no extinction of the lineage would occur, addition to a son, he have a son’s son or two grandsons living, as the term “son” means son’s son, and son’s grandson. It will be observed that the answer is not directly in the question was: is it legal to adopt a son under such circumstances? and the states that, it is illegal under such circumstances to give away a son in adoption; in fact, the prohibitory injunction applies as well to the giving as to the receiving; the of an only son being considered as parting not only with the sole means of evading al torment himself, but as placing his ancestors in the same predicament, and as ing, therefore, the interests of others whom the law will interpose its authority to pro—Macn. H. L. Vol. II., pp. 178, 179.
both prohibited, without which formalities a *dattaka* adoption cannot be carried into effect.*

**Authorities:**

"Let no man give or accept an only son, since he must remain to raise up progeny for the obsequies of ancestors; nor let a woman give or accept a son, unless with the assent of her lord."—*Vashishta*, cited in the *Dattaka-mimansa* and *Dattaka-chandrika*.

Sudder Dewanny Adawlut, May 14th, 1823. Nundram and others *versus* Kashee Pandey and others.†—Macn. H. L. Vol. II. Ch. VI. Case 4, p. 189.

**Cases**

I. The next case I shall mention, is one to which I have before alluded—one, in which the adoption by a *Brahmin*, of his sister's son, was declared valid. This decision was *manifestly wrong*, and opposite to *all* authority except the deposition of some *Pandits*, who, by their testimony upon oath, led the Court into error.—We ought not perhaps to blame the Judges before whom the cause of Ramchunder Chatterjea *versus* Sumboochunder Chatterjea (that is, the cause above alluded to) was tried.

The doctrine which prevailed in the case of Ramchunder Chatterjea *versus* Sumboochunder Chatterjea, has been, I may say, overruled by a subsequent proceeding in the Supreme Court.

II. Lucki-naraen Tagore (a *Brahmin*) died possessed of considerable property, movable and immovable. Three wives, viz. Sreemotee Taramonee Dabee, Sreemotee Bhugobuttee Dabee, and Sreemotee Digumbee Dabee, survived him, and at the time of his death, he had not a child.

Lucki-naraen made a will, by which he left 5000 Rupees to each of his wives, and 1000 rupees, in addition to the 5000, to his second wife Bhugobuttee. In his will he recited the pregnancy of his youngest wife Digumbee, and declared that her child (son or daughter) should be the possessor of his wealth. He constituted Jugomohon Mullik his executor.—Jugomohon Mullik sometime after his death, died,

---

* In this respect there is no difference between the Hindu law, as current in Behar, and that as current in Bengal.
† See however the latter part of the effects of adoption.
having made a will and constituted Bustom Doss Mullik his executor. In this state of things, it was assumed, and received as a matter of course, that Bustom Doss Mullik became the executor of Lucki-naraen Tagore. I am particular in noticing this, because it may serve to show the extent to which the wills of Hindoos are recognised in the Supreme Court.

Thirteen days after the death of Lucki-naraen Tagore, his youngest wife Digumburee was delivered of a son. This son died in seventeen days after his birth.

If Lucki-naraen had died intestate, his son must have succeeded to his property as heir at law; and Digumburee, his mother, surviving him would incontestably have succeeded to the property as his heir. Lucki-naraen, however, made a provision by his will, in case of the death of the child with which his wife was enceinte. In the event of its death, he directed that his widows should adopt a son. If they could not all agree in the selection of a boy for adoption, he directed that one should be chosen by his first and second widows, Taramonee and Bhugobuttee. If the first and second widows could not agree in the selection, he then directed that a boy should be chosen by his second and third widows, Bhugobuttee and Digumburee.

Digumburee, the youngest widow, and mother of the child of Lucki-naraen, filed her bill, affirming her right to the estate of her husband, in consequence of her having had a son by him, whose heir she stated herself to be by the Hindu law. (In this case,) the will was established, and directions were given for the adoption of a son according to its provisions. The widows could not be brought to concur in the selection of a boy for adoption. A reference was then made to the master, who was directed to enquire and report to the Court concerning the fitness of a boy to be adopted as the son of Lucki-naraen Tagore. The master reported in favour of Taracoomar Surmono, who had been nominated for adoption by the second widow, Sreemotee Bhugobutte Dabee. This boy was the son of Bhugobuttee's uncle.

The Master's report was confirmed, and this furnished a matter for further contention.—The boy Taracoomar was to be adopted, but the question was, which of the three widows had a right to receive him in adoption. The law is clear, and was undisputed. The boy could not
be received by the three widows jointly. He must be received by one of them—and would then be considered as the son of Lucki-naraen and the widow by whom he had been received:—about this there was not, because there could not be, any dispute.

Had it not been for the natural relation in which the child stood to Bhugobuttee, the second widow, the Court, considering the preference which had been given to her by her husband, might probably have declared her the properest person to act as adopting mother. But it was a family of Brahmins, and her claim was impugned upon the ground of relationship, it being argued that she could not, without incest, be the mother of her uncle's son. The argument was supposed to be conclusive, for she withdrew her pretensions.

There was no dispute as to the eligibility of this boy. He might have been adopted by Lucki-naraen himself, but not as the son of Bhugobuttee, who was his first cousin.

The master reported in favor of the first widow, and the Court confirmed his report; not from a conviction of its having been right, but because it was not opposed, and because it did not appear that the third widow ought to have been preferred.

Incest was the ground upon which the objection rested in each case—and it would be absurd to say that a man might be the adopting father of a sister's son, yet that a woman could not receive the son of her uncle in adoption. If the latter case may be said to have been decided, the former must be admitted to have been overruled.

I can affirm (the whole proceedings having taken place under the will of Lucki-naraen) that the Court was inclined to prefer Bhugobuttee to either of the other widows, and would have preferred, if it had not been deemed that she was disqualified by her relationship to the child.

If Lucki-naraen had been related, as Bhugobuttee was, to the child in question, it is not said that he himself could have adopted it, or that it could have been adopted as his after his death. That Lucki-naraen might have adopted this child, related as it was to Bhugobuttee, is admitted—but does it follow that he could have adopted as hers?
I do not assume any thing when I say that Bhugobuttee could not, after the death of Lucki-naraen, receive this child as his; if he, in his life time, could not have adopted it as his by her. The child, being adopted after Lucki-naraen’s death, is adopted as his to all intents and purposes, as it would have been, had the adoption been made in his life time by himself; and the widow, who receives a child adopted after her husband’s death, is in relation to the child, exactly as a wife would have been to one who had been adopted as hers, by her husband in his life time. The question then is this—could Tara-coomar Surmonoo have been adopted as the son of Lucki-naraen and Bhugobuttee?

It appears to me that, for the purpose of qualifying him to adopt this boy as hers, or for the purpose of qualifying her to receive it after the death of her husband as his, we must go the length of denying that the prohibition is founded upon natural relationship, or make it evident that incest is permitted as to females, although prohibited as to males.

It is upon natural relationship alone, that the restraint is placed. The boy is supposed to have been born of the wife, or the widow by whom he is received in adoption; could he then have been begotten without incest by the man whose child he naturally is upon the woman who receives him in adoption? This must be the criterion, unless we discard the principle as it may affect females. Unless we say that a woman may guiltlessly be the mother of a child by her uncle, although a man can not, without crime, be the father of a child by his aunt.

Viewing the case in this light, and admitting that the individual might have been adopted by Lucki-naraen himself, or by his widows in pursuance of his will; I am satisfied that Bhugobuttee could not, either in the life time of her husband, or after his death, have received this boy, as his mother, in adoption.—Cons. H. L. pp. 166—174.
SECTION VII.—ON DWYAMUSHAYAYANA.

 Vyavastha. 542. When a son is given by the natural father and received by the adopter with this stipulation: "This is a son to us both," he becomes a Dwyamushayayana (son of two fathers.)

Reason. This must be understood, where there may be a stipulation to this effect, between the two,—"This is a son to us both,"—and such only is called a Dwyamushayayana, having two fathers (a) and belonging to two families (i).—D. Ch. Sect. II. § 34.

(a) 'Having two fathers'—that is, being a son of both the natural father and the adopter; since they are in common fathers of a Dwyamushayayana son.

(i) 'Belonging to two families'—This, however, is the case where the adopter is of a different family (gotra;) the above expression, therefore, is applicable to that Dwyamushayaya who is adopted by a man of a different family; as in that case alone he belongs to both families,—and because an adopted son received by a man of the same family, having no other family to belong to, the expression in question is quite inapplicable to him.

According to the doctrine of the Dattaka-mimansa, "Should a child, directly on being born, be adopted; as his initiation under both the family names would be wanting, he would partake only of the family of the adopter."—D. Mim. Sect. VI. § 41.

 Vyavastha. 543. The adoption of an only son in the Dwyamushayana form is proper as well as valid, though it is not so in the form of absolute Dattaka.

Authority. The prohibition, "let not a man give an only son" refers to an adopted son, other than the Dwyamushayana, or son of both fathers; for, (where the adopted son is

* There is a particular species of adoption termed Dwyamushayana, where the adopted son still continues a member of his own family and partakes of the estate both of his natural and his adopting father, and, so inheriting, is liable for the debts of each.—Macn. H. L. Vol. I. p. 71.
544. The *Dvya)mushyadyanas* are of two descriptions: *Nitya Dvya)mushyadyana,* or absolutely son of two fathers, and *Anitya* *Dvya)mushyadyana,* or incompletely son of two fathers—*Vide D. Mím. Sect, VI. § 41.*

545. He is named absolute *Dvya)mushyadyana,* who is given in adoption with this stipulation,—‘this is son of us two, (the natural father and adopter.)’—*Vide Ibid.*

546. The incomplete *Dvya)mushyadyana* is he who is initiated by his natural father in ceremonies ending with that of tonsure, and by the adoptive father in those commencing with the investiture of the characteristic thread†—*Ibid.*

**Remark.** This, however, must be understood when the boy is adopted by a man of a different general family (*gotra,* after being initiated in the ceremony of tonsure (in the family of his natural father.) This is declared by (the author of *Mimánsá*)

---

* To this form of adoption the prohibition as to the gift of an only son does not apply. It may take place either by special agreement that the boy shall continue son of both fathers, when the son adopted is termed *Nitya Dvya)mushyadyana*; or otherwise, when the ceremony of tonsure may have been performed in his natural family, when he is designated *Anitya Dvya)mushyadyana*; and in this latter case the connection between the adopted and adopting parties endures only during the life time of the adopted. His children revert to their natural family.—*Mán. H. L. Vol. I.* p. 71.

An only son cannot become an absolutely adopted son (*kheda datta,*a) but he may be affiliated as a *Dvya)mushyadyana* or son of two fathers. In this case, the reason of the prohibition—viz. Extinction of lineage to the natural father,—would not apply.—*Sutherland’s Synopsis,* Head Second, § 4.

† Here also, the stipulation—‘This is son of us two,’ (the natural father and adopter,) must be understood to exist; as without such stipulation there cannot be an adoption in the *Dvya)mushyadyana* form. Thus the author of the *Chandikā* : “The meaning is,—Where a mutual agreement, between the natural father and adopter exists: (those affiliated through the adoption of a holy saint,—that is one pronounced by a holy saint,—are *Dvya)mushyadyanas.*”—D. Ch. Sect. II. § 40. See also *Ibid* § 34, ante, p. 846.
himself: "Since they are initiated under the family names of both even, they are sons of two fathers; but incompletely so."—D. Mim. Sect. VI. § 41.

This then is the sum of the whole:—

Vyavastha. 547. The son adopted before his tonsure, with the above stipulation, by one of the same or a different general family (gotra,) is a Nitya Dwyámushyáyana (absolutely son of two fathers;)—the son received in adoption after his tonsure, with the above stipulation, is, a Nitya Dwyá-
mushyáyana if adopted by one of the same gotra,—and Anitya Dwyámushyáyana if adopted by a person of a different gotra.*

548. The connection of the adopter with an Anitya Dwyámushyáyana son lasts only during the life of such son,—it does not extend to his children.*

Reason. Because the connection between an Anitya Dwyá-
mushyáyana and his adopter ceases to exist after the death of the former.

Authority. I. Intending all this, SaWyáshádha says,—"of ab-
solute Dwyámushyáyanas of both, &c."—"By this compendious rule, having declared the connection of absolute Dwyá-
mushyáyana with the patriarchal saints in both families, the author by another aphorism, commencing,—"Of sons given, and the rest like the Dwyámushyáyanas &c,"—ordains the same connection with respect to those incompletely Dwyámushyáyanas." Now, this is thus explained by Savara ramání. "Treating on Dwyámushyáyanas, the author mentions those incompletely so, 'of sons given,' &c. Unto those only, not to issue beyond, (does the connection with both families extend.) By the first only, the initiatory rites (ending with tonsure are performed.) If by the adopter, (the family of the adopted,) is that of the latter, on account of priority. From this alone (the same is the case,) in respect to a descendent beyond. So also those, who are affiliated by the descendent of the same general family, (as, for instance, a nephew, by an uncle,) are of the adopter's family only.—D. Mim. Sect. VI. § 42.

II. The meaning of this explanatory passage is this.—He only is connected with both families, who has been initiated under both family names; not descendants beyond. In reply to the question, as to the cause of connection with the family of the natural father, the author says, "By the first, &c." 'The first;'—that is, the natural father: (the cause is)—on account of the initiatory rites being performed by him only. Now the initiatory rites, (alluded to,) are those ending with tonsure: on account of this passage from the Kālikā-purāṇa. "O Lord of the earth, a son having been regularly initiated, under the family name, of his (natural) father, unto the ceremonies of tonsure inclusive, does not become the son of another man: this has been already before explained. He does not become exclusively the son of another, but is the Dwyāmushyāyana, or son of two fathers. Anticipating a question as to what would be the case, were the initiation performed by the first; the author adds,—"If by the adopter &c." If every initiatory rite from that on birth, or even those commencing with tonsure, be performed by the adopter only, the family (of the adopted) is of the latter,—that is, of the adopter only. For this, a reason is subjoined:—"on account of priority"—meaning—from precedence in the performance of initiation. The author declares the family, (required to be known,) in the instance of the issue of the Dwyāmushyāyana, and that of the (absolutely) adopted son:—"from this alone"—from the initiation taking place under the family name only of the adopter, in both instances even, his is the family of the descendants beyond.—D. Mīm. Sect. VI. § 43, 44, 45.

III. Treating on absolute Dwyāmushyāyanas, the author mentions those incompletely so.—"Of sons given and the rest, &c."—"Unto these only, not to issue beyond, (does the connection of both families extend.) If the initiatory rites are performed by the first only, (the family is his:) but if by the adopter, that of the latter; on account of priority. Through him only, in the case of descendants beyond (the family is determined.) The intent of this explanatory passage is this:—As in the case of the son of the wife—should there be an agreement between the two, the adopted son participates in the families of both: otherwise, where the whole of the initiatory rites have been performed by the natural father only, he shares the family of such father; but in the case of the initiation* being performed by the

*Sect Section X, Head Fourth.
adopter, in that of the latter,—that of the adopter,—on account of
priority,—meaning superiority. Through him only, in the case of de-
cendants beyond, the family is determined.—D. Ch. Sect. II. § 37, 38.

Remarks. According to some, sons absolutely adopted are also
of two descriptions—Nitya dattaka (permanently
adopted) and Anitya dattaka (temporally adopted.)—That is to say,
the boy adopted after initiation in the ceremony of tonsure in the
family of his natural father, not being vested with all the rights of a
son, is an Anitya dattaka, who is equal to a dwyámushyāyana; and
the boy adopted before his tonsure, and initiated in that and the rest
of the ceremonies in the adopter's family, is a Nitya dattaka.

This opinion is sufficiently correct. Nitya datta, and Anitya datta
distinctions made by some writers, are not improperly interpreted into
permanent and temporary adoptations. The Nitya datta neither returns
himself, nor do any of his descendants return to the gotra of his
natural father, but remain from generation to generation in that of
the adoptive one. The Anitya datta does so return. He that is so
adopted indeed remains, while he lives, in the gotra of his adoptive
father; but his son returns to his original one. Describing the Anitya
datta, Vidyārānya quotes the following text from the Nirṇaya-sindhu:
"That son, to whom the prescribed ceremonies have been performed
in the gotra of his natural father, as far as the tonsure, does not possess
the full qualities of a son: he is a temporary son only" (Anitya datta.)
The author quotes one of the vachanas of Sātvāśādha which states
the anitya-pultra to be equivalent to the dwyámushyāyana, or son of
two fathers; and hence it follows, that he is to perform the funeral
ceremonies of both fathers, the natural and the adoptive.

The result is that Nitya datta is a son adopted from the same gotra
before or after the ceremony of the tonsure; or a son adopted from a
different gotra before the tonsure; Anitya datta is a son adopted from
a different gotra after he has received the tonsure in his natural gotra.
The performance of the tonsure is the cause of the temporary nature of
the latter species of adoption.—Remarks by Mr. Ellis. See Str. H. L.
Vol. II. pp. 97, 98.

Vyavastha. 549. One boy, who is not a brother's son, can
be adopted, whether as an absolute dattaka or
as a dwyámushyāyana, only by one man,—not by two or more.*

* Two persons cannot join in the adoptions of one son.—Macn. H. L. Vol. p. 77.
Authority. "By a man destitute of a son."—From the singular number being here used, it follows that the same son must not be adopted by two or three persons.—But would not the law, as to the son given, and the rest being dwyamushyayanas, (or sons of two fathers,) be thus contradicted? Not so; for, the state as son of two fathers imports both a natural and an adoptive father, and the prohibition regards two adoptive fathers. Thus there is no contradiction.—D. Mim. Sect. I. § 30—32.

Vyavastha. 550. A whole brother's son may be adopted in the dwyamushyayana form by two or more uncles.*

* The same person cannot be adopted by more than one individual, except in the case of one nephew, by several uncles, the whole brothers of his natural father.—Sutherland's Synopsis, Head Second, § 4.

Thus, though a youth may in this way have two fathers, he cannot have two adoptive ones; since the same son cannot be adopted by more persons than one, excepting as between a nephew and several uncles; nor, in this case, is it clear that it can be always practicable.—Str. H. L. Vol. I. pp. 74, 75.

Sir William Macnaughten says:—"Two persons cannot join in the adoption of one son. A notion seems to have prevailed, that two brothers might adopt the same individual; but this is entirely erroneous. The supposition seems to have proceeded on a mis-construction of the following text of Manu:—'If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of a male child by means of that son.' But that text is not meant to authorise the adoption of a nephew even by two or more brothers. The adopted son of one brother would of course offer up obligations, to the ancestors of all, and so far would perform the office of a son to them also; but he would not take the estate of his adopting father's brothers, in the event of their having any nearer heir." (Macn. H. L. Vol. I. p. 77.)—And for authority he refers to the following passages of his father's Considerations on the Hindoo Law.—"In page 136, I have expressed myself as follows.—'From what has been already said, I conclude that two men, could not, at any time, have adopted the same son.' In the year 1821, Sir Edmund Stanley, Chief Justice of Madras, applied to me to procure for him the opinions of Pundits. The case was as follows. There were two Hindoo brothers who had joined in an adoption of the same son. Neither of the brothers had male issue, but the elder one had a daughter. This daughter married the son who had been so adopted; and her father (after the adoption and marriage of his daughter) took a wife by whom he had a son. The adopted son was said by some to have been, when taken in adoption, fifteen, by others he was said to have been twenty years of age. The contest, in the Supreme Court at Madras was between the adopted son and the son who had been begotten afterwards. I consulted the Supreme Court Pundits personally, and received the following information. Two men, whether brothers or not, cannot adopt the same boy as a son. In the absence of my son from Calcutta, Mr. Courtenay Smith, a Judge of the Sudder Dewanny Adawlut, was so good as to obtain for me, from the Pundits of the Court, their answers to the following questions. Question first.—Can two Hindoo brothers, A & B, adopt the same
Authority. As 'they' is a compound, formed by the retention of one term and omission of others, being resolvable into the phrase "he and they (dual and plural)," at the desire of one two or more (brothers,) for male issue, the affiliation of a brother's son takes place. ' By means of that.'—[By him even, by whom the natural parent becomes the father of male issue, do all the brothers also become so.]—D. Mim. Sect. II. § 43, 44.

Sreemutty Joymony Dossee versus Sreemutty Sirosoondry Dossee:

Case hearing on the vyavasthas Nos. 529& 542&543.

Ryan, C. J., in giving Judgment, said. The Bill prays amongst other things that one Colly-coomar may be adopted. It has been found upon the issue that their was a direction to adopt. The defendant's counsel has objected first that Colly-coomar is the only son of his father, and secondly, that the initiatory ceremonies, and particular tonsure, ought to be performed in the adoptive father's house. On the first point, the adoption of an only son is no doubt blamable by Hindoo law, but when done it is valid. We entertain therefore no doubt as to the first point, and think that Colly-coomar may be adopted. Parties having two modes of doing the same thing, the Court will not suppose that the party has adopted that one which is immoral and blamable. The agreement between the adoptive and natural father may be for him to become duryamushyayana, or son to both fathers. We think in this case that Colly-coomar may have been thus adopted, and if so he will have been adopted without blame. Upon the second point, as to the ceremony of tonsure having been performed in the house of the natural father, it is no bar to the adoption; for after performance, a sacrifice to fire, even amongst the three first classes, may be resorted to, and this will undo its effects. But in this case the parties are Shudras, and there is no ceremony but marriage for them.

Grant and Malkin, Jr. concurred.

March, 28th, 1837, Fulton's Reports, p. 75.

person (C) as a son?—Answer.—They cannot, any more than two persons can marry the same girl."—Cons. H. L. pp. 473—476.

The result of all this is, that two or more persons (whether brothers or not,) cannot adopt absolutely one and the same son, be he the son of a brother or any other person; but there is no prohibition as to two or more brothers adopting in the duryamushyayana form, one and the same son of another brother. On the contrary such adoption seems to have been allowed by law, as is manifest from the passage of the Dutake-mund in the above quoted. Hence, although two or more persons cannot absolutely adopt a brother's son, yet they can adopt him in the duryamushyayana form.
SECTION VIII.

AGE OF THE BOY TO BE ADOPTED.

Remarks.
The proper age for adoption has been differently defined by the authorities who have written on the law of adoption. The author of the Dattaka-mimansa, citing the following texts as of the Kalika-purana, has acquiesced in the doctrine therein inculcated, adding, however, by way of explanation of the text No. 2, that the son adopted after having been initiated under the family name of his natural father does not exclusively become the son of the adopter, but is a Dwямushyayana, or son of two fathers. — "Sons given and the rest, though sprung from the seed of another, yet being duly initiated under his own family name, become sons. O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man (a.) The ceremony of tonsure and other rites (chāḍḍayā) of initiation being indeed performed under his own family name, sons given and the rest may be considered as issue:* else, they are termed slaves. After their fifth year, O king! sons given and the rest are not sons. (But) having taken a boy five years old, the adopter should first perform the sacrifice for male issue.—D. Mīm. Sect. IV. § 22.

(a) He does not become exclusively the son of another, but is a Dwямushyayana, or son of two fathers.—D. Mīm. Sect. VI. § 43.

* The following appears to be the doctrine of Nanda Paṇḍita, from his elaborate and intricate gloss on the passage referred to, which is attributed to the Kalika-purana. The most preferable object for adoption is a child, wholly uninstructed: his filial relation proceeds from the performance, by the adopter, of initiatory rites. Next in rank to him is one initiated as far as tonsure exclusive, for the performance of which the period from the third to the fifth year is prescribed. Inferior, as an object of adoption, is one whose tonsure has been performed by his natural father, who, provided he be under six years of age, may be adopted, and acquires filial relation to the adopter, on the performance, by that person, of the different initiatory rites, preceded by a sacrifice for male issue (pitravṛtti.) Such son, from his having been initiated in tonsure and other rites, in both families, is a Dwямushyayana, or son of two fathers. It is to be observed, that Nanda Paṇḍita, in the abstruse gloss noticed, seems to have betrayed himself into an inconsistency. According to his explanation, if the boy, proposed to be adopted, has not been initiated in the rite of tonsure by his natural father, he cannot be adopted after having attained his fifth year; if, however, he has been so initiated, he may be affiliated, (provided he be under six years of age,) a sacrifice and so forth being observed, as already noticed.—Sutherland's Synopsis, Note XI.
Raghunandana too has cited the same passage as from the Kālikā-purāṇa; and he and his followers have construed the passage as an unqualified prohibition of the adoption of a youth or child, whose age exceeds five years, and especially one whose initiatory rites, as far as tonsure inclusive, have been performed in the family of his natural father.*

According to Jagannātha, the compiler of the Digest, the said passage constitutes an absolute prohibition of any adoption whatsoever of one whose age exceeds five years, or on whom the initiatory rite of tonsure may have been performed in the family of his natural father.†

And, in a case‡ in which the adoption of one older than five years was contended to be illegal, on the opinion of its Pāṇḍita (declaring) on the authority of the Kālikā-purāṇa, the adoption of such person to be legal, the Sudder Dewanny Adawlut appears to have determined the following points, as applicable to Bengal.—1st. That adoption is restricted to no particular age.—2nd That one initiated in tonsure, in the name and family of his natural father, is incapable of adoption.—3rd. That the age of the person selected for adoption must be such as to admit of the ceremony of tonsure being performed in the adopter’s name and family.

Now the doctrine of the Dattaka-mīmāṃsā, above alluded to, cannot be received as the law of Bengal, by reason of its being different from that inculcated by the Dattaka-chandrīka, which in this country is respected as of paramount authority, and is followed in preference to all authorities, on the subject of adoption.§

† See Sutherland’s Synopsis, Head Second, § 7.
§ The difference of opinion between these two authorities with respect to this point, arises from a difference of grammatical construction. The term in the original is ‘Chādājyā (ceremonies having tonsure at the beginning,) which is a compound epithet termed ‘bahi-bhrīṭi;’ which is again divided into tadagrāṇa sambiyāna bahubhrīti and itadagrāṇa sambiyāna bahubhrīti (inclusive and exclusive.) The author of the Dattaka-chandrīka maintains that the term Chādā is not included in the expression Chāddājyā, and consequently is of opinion that rites after the Chādā, that is commencing with the investiture, are required to be performed in the family of the adopter; whereas the author of the Dattaka Mīmāṃsā maintaining that Chādā is included in Chāddājyā, holds that rites commencing with, that is including, Chādā, are to be performed in the adopter’s name and family.—Sec. D. Ch. Sect. II. § 20 and D. Mīm. Sect. V. § 22.
As to the opinion of Raghu-nandana and his followers including Jagan-nātha, which is based solely upon the passage in question as from the Kālikā-purāṇa, it is to be observed that the genuineness of that passage itself is questioned by many, particularly by the authors of the Chandrikā and the Vyavahāra-mayākha, and it is apparently not authentic, being wanting in many copies of that purāṇa, and bearing the look of an interpolation in those which do contain it, as it does not connect well with the context.* Indeed, had it been authentic, it would have been very probably cited as authority, instead of being doubted as unauthentic, by the author of the Dattaka-chandrikā. (See D. Ch. Sect. II. § 25, 26.)

Even allowing the opinion of Raghu-nandana and his followers not to be an unfounded one, it cannot be, as it has not hitherto been, followed in practice, being, as it is, at variance with the doctrine of the Dattaka-chandrikā. Should it be alleged that, being cited by many of the compilers, some of whom are writers of great authority, such as the author of the Dattaka-mimāṃsā, the passage of the Kālikā-purāṇa in question must be received (whatever may be thought of its authenticity) as the expression of a doctrine that has their sanction,—the reply would be, that still it cannot be accepted as the doctrine of the Bengal school, when a different doctrine on the subject has been inculcated in the Dattaka-chandrikā, which has been adopted here as the law on adoption, and has been invariably and unscrupulously followed in practice, in preference to all other authorities on the subject.*

The compilation of Raghu-nandana is, no doubt, respected in Bengal as a very high authority, yet on the subjects of inheritance and adoption preference is given respectively to the Dāya-bhāga of Jīmūtavāhana and Dattaka-chandrikā of Devānanda-Bhatta.

As regards the Sudder Court's determination above alluded to, its defects will be known from the remarks upon it by Mr. Sutherland.

* The limitation to the age of five years is founded on a passage in the Kālikā-purāṇa, but the authority of the passage is doubtful.—The Dattaka-Chandrikā makes no mention of it, though the Dattaka-mimāṃsā does. The latter, being a Benares authority, it may be proper to apply the limiting principle to that province, but not to Bengal or the Deccan, where that principle is not only not recognised, but where it is denied, and adoptions continually take place at an age far exceeding five years.—Macal. H. L. Vol. I. p. 74.

They are as follows: "The limitation of adoption to any particular age is thus over-ruled: but without presuming to question, as applicable to Bengal, the accuracy of the other two points of law, resulting from the decision referred to, there is no impropriety in expressing a doubt, whether they can be received as constituting a general rule universally decisive on the questions which they regard.—1st. Such rule would be at variance with the doctrines of the Dattaka Mimansa and Dattaka-Chandrika.—2nd. The authenticity of the passage, attributed to the Kālikā-purāṇa, on which the opinion of Jagana-thā, and the puṣṭis of the Sudder Devanny is founded, is justly denied, and is interpreted as admitting the adoption of one, although initiated in tonsure, by his natural father."—Synopsis, Head Second, § 8.

Thus the decision in question, which professes to be applicable to Bengal, being at variance with the doctrine of the Dattaka-chandrika, and consequently of the Bengal School, of which that work is the paramount guide, I do not know how it can be followed in practice without acting contrary to the long established doctrine of the country.

Observing such discrepancies amongst the different authorities regarding the proper age for adoption, I have taken care to record the following Vyavasthis in accordance with the doctrine of the Dattaka-chandrika, as no Vyavastha repugnant to its doctrine can in this country be followed in practice, and the principles thereof have been unscrupulously and judiciously adopted for Bengal by all the European authorities.

 Vyavastha. 551. The period for adoption of a boy of the Brāhmaṇa, Kshatriya, or Voishya caste is extended to his upa-nayana,* and of the Shudra caste to his marriage.†

* Upa-nayana is the investiture with the characteristic cord. It is subsequent to the ceremony of chāda-karana ( tonsure,) which may take place either immediately or some time before the upa-nayana. For these ceremonies, see ante, p. 551.

† In the Dattaka-chandrika the period fixed for adoption is extended, with respect to the three superior tribes, to their investiture with the characteristic cords, which ceremony is termed upa-nayana, and is subsequent to that of tonsure or chāda-karana: and with respect to Shudras, to their contracting marriage.—Macd. H. L. Vol. I. p. 72.

The most general and consistent rule, which presents itself, is this. 'Any person on whom the adopter may legally perform the upa-nayana rite, is capable of being affiliated as a Dattaka son.'—Syn. H. 2.

The subjoined appears to be the substance of the doctrine of the Dattaka Chandrika resulting from the most abstruse part of the work. 1st. The most preferable object of
VYAVASTHA-DARPANA.

 Authority. I. If merely the investiture be performed (by the adopter, the previous rites having been performed by the natural father,) the filiation of the son given, as son of the adopter, is completed; in conformity with the text of VASHISHTRA subjoined:—“Sprung from one following a different shákhá, (or branch of the Vedas,) the given son even, when invested with the characteristic thread, under the family name of the man himself, according to the form prescribed by his peculiar shákhá, becomes participant of the duties of such shákhá.”—D. Ch. Sect. II, § 23.

adoption is one, for whose upa-nayana rite the prescribed principal season has not elapsed: the previous rites performed by the natural father are not to be renewed. Such son becomes filially related by the mere performance of the rite in question. 2nd. Inferior as an object of adoption is one, for the performance, of the upa-nayana rite on whom, the principal season has elapsed. In the case of such adoption, the sacrifice for male issue must be observed, and the rites of tonsure, and the rest, be performed by the adopter on the adopted.—Sutherland’s Synopsis, Note XI.

Marriage is the only initiatory ceremony for a Shádra (ante, p. 366.) It being therefore absolutely necessary for a Shádra adopter to perform that ceremony in his own name, the period for adoption of a Shádra boy is extended to the time of his marriage. See Authority II.

“Another objection, however, has been raised to the plaintiff’s adoption, founded upon his age. That age is said to have been four and a half years by the one side, and twelve years by the other. It seems to me that the evidence established that plaintiff was nearer the latter than the former age, and consequently that he must have undergone the ceremony of tonsure previously to his adoption by Chandrabullee. As, however, it is not contended that the plaintiff was invested with the thread previous to his adoption, the adoption in the present case is not invalidated.”

“The rule prescribing that adoption should take place before the boy is five years old has been held by the court following the best authorities to be simply directory, and not imperative, and the only absolute prohibition as to age seems to be that amongst Brahmuns adoption cannot take place after the boy has been invested with the thread, which in Bengal is limited to the sixteenth year, or amongst Shoodras after his marriage. Within that limit adoption must take place subject to the different rules as to the performance of the ceremonies of inauguration, of which the principal is tonsure, to be applied on consideration whether the boy to be adopted be a stranger or related to the adopting father.”

“Under this view there seems to me to be no doubt but that the plaintiff in this case, a nephew, was altogether eligible for adoption by the uncle, his adopting father. Whether under any or what circumstances, a stranger can be adopted after the ceremony of tonsure has been performed in his natural father's family, and whether that ceremony can and should be repeated, and if it can, what is the effect of its repetition, are questions regarding which conflicting opinions may be gathered from the Hindoo law text books. As, however, they are not necessarily involved in the present case, it is needless to pursue
But this must be understood in respect to an adoption taking place within the primary season for the rite in question, which extends to the eighth year.*—D. Ch. Sect. II, § 28.

"Oh, Lord of the earth! a son having been regularly initiated, under the family name of his (natural) father, unto the ceremony of tonsure, does not become the son of another man. When indeed, the ceremony of tonsure and other rites of initiation (Chādādyā-sanskārā) are performed (by the adopter,) under his own family name, (then only) can sons given, and the rest, be considered as issue: else they are termed slaves. Whether he be one, whose initiation has been completed, or one whose pupilage (Śośišāvā) has passed, on adoption, after the fifth year, the adopter should first perform the sacrifice for male issue." As for what, they

them further."—Part of the late Sudder Court's judgment passed on the 7th of March 1852, in the case of Ram-kiyshore Acharjea versus Bhoobun-moyee Deeba.

Again on review of the said judgment the above finding was confirmed in the terms following:

"Moreover, the united authorities of Macnaghten, Colebrooke, and the Translator of the Dattaka-chendrika, and precedents of this Court, all cited in either one or other of the judgments of this court, now objected to, all rule that an adoption is not restricted to any particular age, but is valid if made previous to the performance of the rites of investiture of the thread, viz. the sixteenth year."

"I can find no written authority for the absolute restriction which is now attempted to be imported in to the doctrine of adoption, founded on the necessity of their being the possibility of performing the investiture within the primary season, though such right may be postponed till the sixteenth year. It was formerly contended that adoption must be made before the boy to be adopted was five years old. The text was declared to be simply directory and not imperative. On this point it appears to me the Dattaka chendrika is also directory and not imperative, and notwithstanding the preference which Hindu lawyers have always shown for early adoptions they have never prohibited adoption of Brahmins in Bengal to any particular time previous to the period before which the ceremony of investiture must take place, viz. the sixteenth year."—Sudder Court's order admitting the review of judgment, dated the 14th of January 1860.

The above finding of the Sudder Court is left intact by the Privy Council, although some other parts of the decision aforesaid have been reversed by that Tribunal. See ante, p. 784.

* 'Extending to the eighth year.'—This is the primary season for the upa-nayana of Brahmans, the primary seasons for the upa-nayana of Kshatriyas and Vaiśyas being respectively within the eleventh and twelfth years calculated from their conceptions; as will be known from the text of Manu hereafter cited. By the term 'eighth year' is meant the eighth year from the date of conception: this also is clear from the same text of Manu,
thus read as from the Purāṇas that is unauthentic.—Were it even authentic, still the interpretations given by some, that,—‘one initiated in ceremonies down to that of tonsure, under the family name of the natural father, bears no filial relation to the adopter; but such relation obtains, where the ceremonies, commencing with that of tonsure, are performed by the adopter only,’—and—‘if a child, whose tonsure has been completed (by the natural father,) or one passed five years of age, be adopted, in that case, his filial relation does not accrue,’—are inaccurate. For, a repetition (of the same position, in two sentences of the same passage,) would follow;—the generally received rule, as recognised by all good persons, in respect to the filial relation, previous to the investiture of the characteristic thread, of one also, adopted under five years of age, (if uninitiated in tonsure by the natural father,) would be invalidated,—and the adopter dying at that juncture, incompetency (of the adopted) to perform his obsequies would result.—D. Ch. Sect. II. § 25, 26.

On the contrary, this is the meaning of the passage:—‘Filial relation (to the adopter) of one initiated down to tonsure, under the family name of his natural father, being first barred,—on the repetition of that ceremony, and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure, and the other rites, by the adopter, the servile state of one initiated (by his natural father unto that ceremony,) and of him, who has passed his fifth year, is intimated: after the performance of that ceremony, and the rest, (by the adopter,) filial relation to him is established. In respect to one, whose initiation has not been performed (by his natural father,) and a child who is under five years of age, this relation is obtained by law alone: and this is notorious.—D. Ch. Sect. II. § 27.

Or there may be this interpretation:—‘a son, (if adopted,) though initiated as far as tonsure, by his natural father, is not a son (to such father:’)—the author having thus premised such son not to be filially related (to his natural father,)—the sentence ‘anyatas-cha putroatom-ydī (meaning ‘and he acquires filial relation to another’) is subjoined as a reason, and thus the objection, that one term, ‘putrah’ (son,) and the particle ‘cha’ are unmeaning, is obviated.—D. Ch. Sect. II. § 28.
"After the fifth year." This regards a Brāhmaṇa seeking the fruit of holiness, resulting from the study of scripture. For, since the fifth year only is the principal season for the investiture of the characteristic thread, of one desirous of such holiness, as is shown by this text,—"For a Brāhmaṇa desirous of holiness, resulting from the study of scripture, the fifth year," &c.,—the passage in question, has the same foundation.—But, for one not so desirous,—'after the eighth year, the adopter, &c.'—D. Ch. Sect. II. § 30.

**Authority.** II. And thus, on account of uniformity of import with the text of Vasiṣṭha,—"Sprung from one following a different śākhā, (or branch of the Vedas,) the given son even, when invested with the characteristic thread, under the family name of the man himself, according to the form prescribed by his peculiar śākhā, becomes participant of the duties of such śākhā"—by the compound epithet 'Chādādyā,' (in the quality conveyed, by which) the term Chādā is not included, rites commencing with that of investiture, for persons of a regenerated tribe would be suggested; but for Śūdras marriage, and so forth, implied.—D. Ch. Sect. II. § 29.

**Vyavastha.** 552. The primary season for tonsure of a Brāhmaṇa, Kshatriya, or Voishya boy is the first or third year of his age; and such season for the upa-nayana of a Brāhmaṇa is the eighth year, of a Kshatriya is the eleventh, and that of a Voishya is the twelfth, year of his age, reckoned from the respective dates of their conception. *

**Authority.** 'By the command of the Veda, the ceremony of tonsure should be legally performed by the first three classes in the first or third year after birth.—In the eighth year from

---

* Sir William Macnaghten says:—"The period fixed, however, for the investiture of the three superior tribes are different. That of a Brahmīn should take place when he is eight years of age, which may be construed optionally, as signifying eight years from the date of conception, or from the date of birth. That of a Kshatriya at eleven years of age, and that of a Voishya at twelve" (Macn. H. L. Vol. I. pp. 72, 73.)—These eight, eleven, and twelve years are, however, to be reckoned from the date of conception, as ordained in the text of Manus quoted: it is true these periods are sometimes calculated from the date of birth, but that is according to the family custom, and not according to the law.
the conception of a Brāhmaṇa, in the eleventh from that of a Kshatriya, and in the twelfth from that of a Voishya, let the father invest the child with the mark of his class.*—Should a Brāhmaṇa, (or his father for him,) be desirous of his advancement in sacred knowledge, a Kshatriya of extending his power, or a Voishya of engaging in mercantile business, the investiture may be made in the fifth, sixth, or eighth year respectively.'—Manu, Ch. I. v. 35—37.

There are also secondary seasons for initiation in upa-nayana. Thus Manu:—’‘The ceremony of investiture hallowed by the gāyatri must not be delayed, in the case of a priest, beyond the sixteenth year; nor, in the case of a soldier beyond the twenty-second, nor in that of a merchant beyond the twenty-fourth.—After that all youths of these three classes, who have not been invested at the proper time, become Vṛtiyas or outcasts, degraded from the gāyatri, and condemned by the virtuous.’’—Consequently,

Vyavastha. 553. A boy, though not initiated in upa-nayana in the primary season, may be adopted before the close of the secondary season ordained for that ceremony.†

* Although in the above text of Manu the primary season for tonsure is ordained to be the first or the third year from the date of a child’s birth, yet if it be the custom of a family to perform the ceremony at a later period, the same is preferable, custom being the transcendental law and superseding the general maxims of the law.—See ante, pp. 314, et sequae.

† Inferior as an object of adoption is one, for the performance of the upa-nayana rite on whom the principal season has elapsed.—Sutherland’s Synopsis, Note XI.

There are secondary periods allowed: for instance, the investiture of a Brāhmaṇa may be postponed until sixteen years after the date of conception, that of a Kshatriya until twenty-two years after the same date, and that of a Voishya until twenty-four years.—Macn. H. L. Vol. I. p. 63.

The author of the Considerations on Hindu Law seems adverse to the extension of the limits. He maintains that, in the case of Gopex-mohun Deb, it was the opinion of all the Pundits who were consulted on his behalf, that proof of his being under the age of five years was indispensable. He also alludes to a remark appended to the case of Kecut-narben, verum Must. Bhobunessuree, decided in the S. D. A. But, with respect to the first, it may be observed, that there does not appear to have been any formal opinion actually taken, and, with respect to the second, it is not apparent on what authority the remark proceeded. The author of the Considerations lays it down as a second rule, that adoption cannot take place in any of the classes after the ceremony of tonsure shall have been performed. From what has proceeded, it will appear, however, that ‘in-
VYAVASTHĀ-DARPAŅA.

REASON. Since after adoption at that time he may be initiated in the upa-nayana.

Vyavasthā. 554. But no boy of the Brāhmaṇa, Kśatriya or Voishya caste should be adopted after his upanyana, and no Shúdra after his marriage: such adoption, if made, is invalid.*

CASE NO. 469 OF 1851.


Case bearing on the vyavasthā Nos. 551, 553 & 554.

The suit was brought in the Zillah Court to set aside an adoption, and to recover possession of property, real and personal, pertaining to the estate of Kishore-nundun Doss Mohapatur, deceased, Zemindar of Pottaspore.

vestiture should have been substituted for ‘tonsure’; and that the doctrine should have been qualified by the provision, that, if tonsure had been performed previously to the fifth year, it might be repeated in the family of the adopting father, the adopted son thereby becoming an anitya dvāmsahayāyana.—Macn. H. L. Vol. I. p. 75.

* It should be observed, however, that where this ceremony of upa-nayana has once been performed, an insurmountable bar to adoption is thereby immediately created. Its effect cannot, as in the case of tonsure before the age of five years, according to the authority of the Dattaka-mimāṃsā, be so far neutralised as to admit of its being re-performed after the ceremony of Putreshī.—Ibid. p. 73.

Another question would likewise arise, whether, even after the expiration of the secondary season for the celebration of the rite in question, as provided in the case of the natural father, the adopter, by observing certain penances, might not derive ability to perform the right in question. A determination of these points in the present compilation, could not, without presumption, be attempted. It may, however, be remarked, that it appears more reasonable to suppose that the celebration, in the family of his father, of so important a rite as the Upa-nayana, or the expiration of the secondary period, prescribed for the performance of that ceremony, should constitute an impediment to adoption of a son given, by precluding the capability of the rite referred to, being celebrated in the family name of the adopter.—Sutherland’s Synopsis, Not a. XII.

This has been doubted by the Translator of the Dattaka-candrika and Dattaka-mimāṃsā, in his Synopsis, at the conclusion of those works, and he diffidently expresses his inability to settle the question, though he inclines to the negative: but independently of there being no authority in support of the affirmative of the question, the fact that investiture constitutes a second birth is conclusive against it. Adoption is permitted on the principle that the adopted son is born again in the family of his adopting father; but this cannot be where the investiture, which causes the secondary birth, has already been performed in the family of the natural father.—Macn. H. L. Vol. I. p. 73, Note.
The particulars of this case are given at pages 83, 84, 85 and 86 of Midnapore Zillah Decisions for July 1851. The following issues were proposed by the Wuksels on behalf of the Appellant:

First.—Whether the Defendant has been adopted according to the Shaster, and the custom prevalent in the family of his adoptive father; and whether the Defendant is proved to have been so adopted?

Secondly,—Whether the fact of the plaintiff receiving as her property, the Zemindaree, &c. from her husband, and her allegation of such being the custom of the family, are proved?

Thirdly,—Whether the decision passed by the Zillah Judge is right with reference to the tenor of the documents filed by both parties and whether the above decision is not defective and incomplete, in consequence of the aforesaid functionary not taking a bewastha from the Court Pandit?

Fourthly,—In case both the defendants' adoption after performance of the requisite ceremonies, and the plaintiff's allegation of obtaining and retaining possession of the zemindaree &c., during the life-time of her husband, be proved, then it is to be seen whether the property, which devolved on the plaintiff while her husband was living, should not be enjoyed by her up to her death?

The Court intimate that the second issue is the first in order, because, if the fact of the gift of the property to the plaintiff be proved, there is no necessity to proceed in the discussion of the other issues.

The Court then proceeded to try the 1st and 3rd issues regarding the legality of the adoption. Moonshee Ameer Alee (pleader for the appellant) stated that the Shasters require that an adopted son, at the time of adoption, should be under five years; the present party was seven or eight years of age when selected. It is true that the objection of the age being five years was not taken in the plaint; but the Judge himself finds the fact that the boys were severally seven and eight years of age when affiliated, and this Court, in appeal, is competent to take up the objection.

The pleader here refers to extracts from Mr. Sutherland's Dattaka-mimansa and Dattaka-chandrikā, quoted at page 110 of the Reports for September 1852, to the effect that adoption is limited to the fifth year. The pleader then requested that the evidence of Sreedhur Goswamin be referred to. This witness's deposition was then read.
This witness states, that the boy, Gopender-nundun, was thirteen or fourteen years of age, when brought to his adoptive father.

Baboo Ramapersaud Roy, on the part of the respondent, then observed, that on the point of age, Mr. Macnaghten has laid down, at pages 71 to 74 in his Hindoo law, that in Bengal the age of five years is not a legal limit, provided tonsure has not been performed in the family of the natural father. Age up to any date previous to marriage is immaterial. A precedent to the same effect is to be seen at page 161 Volume I, of the Sudder Dewanny, Reports, Keerut-narain versus, Musst Bhopnesseree, and again at page 50, Volume V, of Sudder Dewanny Reports, Musst, Dallubee versus Manu Beebee. Then as to the performance of the ceremonies, there are the evidences of seven of the family amlah to the fact of the tonsure, &c. having been performed in the house of the adopting father.

Judgment.

The Court, upon a careful consideration of all the arguments set forth in this case, see no reason to differ from the conclusions at which the judge has arrived. It is possible that some acts were done by Kishore-nundun on the evening preceding his death which might appear to mark an intention to recognise the plaintiff as his successor; but neither can we be satisfied that these acts were performed by him in full possession of his faculties, nor is there testimony on the plaintiff's part of any deliberate and complete acts, by which the rights ordinarily attaching to an adopted son could be held to have been cancelled and superseded. There is, indeed, no testimony, on the plaintiff's part, as to the nature of the arrangement, intended by Kishore-nundun in respect to the adopted boys, then forming an acknowledged part of his family. Had there been really a deliberate diversion of the main inheritance from them to the plaintiff, some provision on their behalf would unquestionably have been made by him.

In regard to the validity of the adoption by performance of the prescribed ceremonies, we find that Kishore-nundun, on the day of receiving the boys, formally announced to the collector that he had taken and adopted them, evidently implying that all needful ceremonies had been then complied with. We find actual evidence on the record to the performance of those ceremonies, which, so confirmed
by the statement of Kishore-nundun himself, seems to us deserving of credit. It has not been rebutted by any testimony on the part of the (plaintiff) appellant, excepting negative statements of witnesses, who say they did not see the ceremonies performed. There has been no attempt to prove that the rite of tonsure had been completed before the boy Gopendur-nundun Doss left the family of his natural father. Such a fact alone could have rendered his adoption void. It is well established by the precedents, to which the respondent's pleader has referred, that the adoption of a shoodur boy (otherwise eligible) in Bengal is permissible at any age previous to his marriage, as that of boys of the higher castes is at any age before investiture with the thread (upa-nayana.)

For these reasons, we consider the adoption proved and valid and reject the appeal of appellant with all costs.—23rd June 1853. S. D. A. D. p. 553.
SECTION IX.

THE FORM OF ADOPTION.

Vyavastha. 555. The adopter, having fasted on the day previous to that of adoption, and on the following day having performed the daily religious duties, and put on (two) rings wrought in kusha (1) grass, performed the áchaman (2,) invoked Vishnu (3) by uttering his name, worshiped Nárāyana (4,) with perfume and flowers, and uttered the word ‘swasti’ (5,) shall three times repeat, in the hearing of the persons attending the ceremony, these words:—“Say ye, (this is) an auspicious day for this act of adopting a son to be performed.”

Vyavastha. 556. Then having uttered ‘Swasti’ and ‘Riddhi,’ (prosperity,) and repeated ‘Swasti na Indra,’ &c. he must make the sankalpa (6:)—“To day of such and such a month and lunar date, I Sree (proper name) Deva-sarmá (7,) of such and such gotra (8,) by reason of being without issue (male,) as well as to propitiate Almighty God by liquidating the debts due to ancestors, and being delivered from the hell (called) ‘put’ (9,) and also to continue my own lineage, I will receive a son in adoption according to the ordinances of the holy sages—Manu, Vrihaspati, Vasishtha, Shounaka, Paráshara, and the rest, and according to the branch of the Veda which I follow.”—Having made this sankalpa, and worshiped the Guru (spiritual guide,) he shall constitute Bráhmanas his representatives to officiate in the ceremony.

1. A species of grass (Poaceae) held so sacred by the Hindús that their hands are thought to be pure while they touch some of it, and no religious rite is perfect without it.

2. The act of washing the mouth by repeating a mantra as a religious ceremony.

3. The second deity in the trinity of the Hindús, whose function it is to preserve the universe.

4. The name of Vishnu considered as the deity who existed before all worlds and moved on the waters of creation.

5. A benedictory term.—Good attend you! amen!

6. A resolution to perform a religious ceremony; a religious ceremony of consecration.

7. The general surname or title of Bráhmanas is ‘Deva-sarma’ or ‘Sarma’ that of Kshatriyas is Barmá, and that of Vaisyás and Shúdras is Dára.

8. See ante, page 657, Note.

9. See ante, pp. 21, 28 Note, also pp. 734–737.
Vyavastha. 557. Next the brāhmaṇa, constituted as A'chārjya, having purified the altar with five gavyas (10,) removed the impediments, and purified himself, shall properly place the ghataś (earthen mugs full of water,) and according to his ability worship Ganesha (11,) and the rest, the planets, and Dik-pālaś (12,) Prajāpātī, and Viṣṇu, and having placed (consecrated) the fire, and made the ekara (13,) according to his branch of the Veda, he shall place (the latter) at his left side.

Vyavastha. 558. After that, the adopter, inviting his friends and relations, representing to the Sovereign (14,) and going before the giver in the assembly shall ask thus: “give the son.” The giver, having repeated five mantras (15)—'Jo Jgayena,' &c.,—shall say, ‘I give,’ and shall give the boy. And the adopter repeating the mantra:—'Devasya-twā' &c., shall hold him by both hands, and say: “I receive (adopt) thee for religious duty; I receive thee for progeny;” and shall once repeat this: “Sprung from the several limbs, especially from the breast, thou, my soul, art called son, mayest thou live for a hundred years!”

Vyavastha. 559. Next, the adopter having offered a burnt-offering to these three mantras of the Rik-veda:—1. 'Yas-twā rhidā' &c., 2. 'Tubhyamagnē' &c., 3. 'Somadatā' &c., shall five times repeat the same.

Vyavastha. 560. After that, the giver shall repeat this mantra: “Sprung from the several limbs, mayest thou live

10. Gavya is the produce of a cow (gry) — the five gavyas are — milk, curds, ghee or clarified butter, cow-dung, and the urine of a cow.

11. Ganesha is the son of Śiva and Durgā: he is the God of wisdom and remover of obstacles, and is invoked by the Hindus at the commencement of each undertaking: by the term ‘and the rest’ is meant the class of gods, five in number, of whom Ganesha is the head.

12. The gods who superintend the quarters of the universe: there are eight of them, viz. one at each of the cardinal points, and four at the intermediate ones.

13. An oblation of vegetable food, confined, however, to barely, sesamum, moog (Phaseolus munus,) and principally to rice boiled in milk and clarified butter.

14. See the text of Vriddha-Gotama and the commentary thereon.

15. Mantra, a text of the Veda, a mystical verse or incantation, a form of prayer a formula sacred to any particular deity.
for a hundred years: belonging to a different gotra, do thou be good
to me and to thyself." Next he shall say to the adopter: "Having
legally received the son given by me according to the sacred law, support
thou him as thy oursa†, according to justice and the ordinance
of the law."

Vyavastha. 561. The adopter then, having repeated this (ma-
stra:) "I anxiously receive thee, as I ought ac-
cording to the tenets of religion, for religious duty, for progeny, for
the preservation of my race: having ceased to belong to the gotra of thy
natural father thou belongeth to my gotra: may good attend thee,
ymayest thou be always happy, and live long!"—shall smell the head
of the child.

Vyavastha. 562. Next, having adorned the son with apparel,
ear-rings, &c., The adopter shall deliver him up to
his wife, if he have one.

Vyavastha. 563. After that, the adopter, having advanced with
the son to the Āchāryya shall seat himself before the
first facing the south. And the Āchāryya with the charu already pre-
pared and kept, shall offer a hundred homas‡ to Prajápati by re-
peating the mantra—"Prajápati," &c., and having finished the charu-
homa, he shall perform the mahā-vyākṛiti-homa, and the homa to the
Creator of the universe.

Vyavastha. 564. Next, he shall perform with Urumbara§ Sā-
midh, a homa to Vīṣṇu, and the tilāyya homa to the
deities worshiped.

Vyavastha. 565. After that, the act (of adopting) being com-
pleted with the performance of the rites commencing
with Shātyāyana (homa) and ending with the singing (called) ʻVāma-
deva;’ and the tilaka (a mark on the forehead) made with the ash at-
tached to srupa (ash rake,) the act of giving remuneration (dakshinā)
shall be performed.

These rites and ceremonies are at present in use:|| there are also some
other rites ordained by sages, as will be known from the texts subjoined.

---

* See ante, p. 657, Note. † See ante, p. 14.
‡ Homa, an oblation to fire, a burnt offering or sacrifice.
§ A wild fig, Ficus glomerata. ¶ Sacrificial fuel.
|| These are to be found in the Dattaka-dīśhiti, and at the end of the commentari
to the Dattaka-mīmāṁsā and Dattaka-chāndrikā.
"I, SHOUNAKA, now declare, the best adoption: 'One having no male issue, or whose male issue has died, having fasted for a son,' &c.—D. Ch. Sect. II. § 2.

VRIDDHA GOUTAMA;—"Having given two pieces of cloth, a pair of ear-rings, a turban, a ring for the forefinger to a priest religiously disposed, a follower of Vishnu, and thoroughly read in the Vedas. Having venerated the king (a,) and virtuous Brāhmaṇas (i,) by a madhu-parka (or prepared food consisting of honey, liquid butter and curds.)"—D. Ch. Sect. II. § 3.

"Both a bunch of sixty four stems, entirely of the kusha grass, and fuel of the palāsha tree,—also having collected these articles: having earnestly invited kinsmen (u) and relations: having entertained the kinsmen with food, and especially Brāhmaṇas (i:) having performed the rites, commencing with that of placing the consecrated fire, and euding with that of purifying the liquid butter, having advanced before the giver, let him cause to be asked thus: 'give the boy'.—The giver, being capable of the gift, (should give*) to him, with recitation of the five prayers, the initial words the first of which, are "Yo-yajnyena," &c.—(The same author continues:)—"Having taken him by both hands, with the recitation of the prayer, commencing,—Devasya-tvā," &c.; having inaudibly repeated the mystical invocation. —"Angād-angāt, &c;' having kissed the forehead of the child; having adorned with clothes, and so forth, the son bearing the reflection of a son. (The text continues:)—"Accompanied with dancing, songs, and benedictory words, having seated him in the middle of the house; having according to ordinance, offered a burnt-offering of milk and curds, (to each incantation,) with recitation of mystical invocation "yas-tvā hridā,' &c.—the portion of the Rik-veda commencing 'Tubhya-magne,'—and the five prayers, of which the initial words of the first are "Somodadat," &c.—D. Ch. Sect. II. § 5, 7, & 9.

VRIDDHA GOUTAMA—"Let him then cause to be offered, as burnt-offerings, an hundred oblations of milk, with liquid butter, contemplating in his mind, as the object the Lord of created beings, with recitation of the prayer:—'Prājā-pate-natwā-detām.'"—D. Ch. Sect. II. § 10.

* 'Should give' is understood.—D. Ch. Sect. II. § 6.
VASHISHTHA—"A person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman;* having convened his kinsmen (u,) and announced his intention to the king (a,) and having offered a burnt-offering, with recitation of prayers denominated ‘Vyāhriti’ in the middle of his dwelling.”—D. Ch. Sect. II. § 11.

BOUDHĀYANA propounds a special rule for the followers of the Tittiri-veda:—"We are about to explain the mode for the adoption of a son, one about to adopt produces two pieces of cloth, a pair of ear-rings, a ring, a priest thoroughly read in the Vedas, a bunch of sixty-four stems of the kusha grass, and fuel of the parna tree. Then having invited kinsmen (u,) into the middle of the dwelling, and having made a representation to the king (a;) having sat down by the direction of a Brāhmāṇa, in the assembly, having caused to be exclaimed,—‘ Auspicious day! benediction! prosperity!; having performed the rites; commencing with the recitation of the prayer—‘Yad-deva-yajana,’—down to the placing of the vessels for water: having advanced before the giver, let him thus beg: ‘Give me this son.' The other replies, ‘I give.’ He receives the child (and says;) ‘I receive thee for the sake of religious duty: I adopt thee for offspring.’ Then having adorned him with clothes, the ear-rings, and ring: having performed the investiture, and other ceremonies down to the kindling of a flame of fire: having dressed the oblations; he offers a burnt-offering after having recited the incantation in the first chapter of the (Yajur) veda commencing,—‘Yastu-hridā-kirinā-manayāna’—with the recitation of the sacrificial prayer, ‘Yas-yaivam sukrite jāta veda,’ &c.—he offers a burnt-offering. Next having performed the burnt sacraments, where the prayers denominated vyāhriti are recited: and that designated Swishti-krit with other ceremonials, being completed, down to the bestowing of an excellent cow, he presents the fee saying, yours (are) these two clothes, the ear-rings, and the ring likewise."

(a) ‘The king’ here signifies, the chief of village, for the text of VRIHAD GOUTAMA recites,—‘having invited all kinsmen and the chief of the village also.’—D. Mīm. Sect. V. § 5.

‘If the king be at a distance, (he should thus venerate) the chief of the village,—for a text recites: ‘having united all kinsmen, and the chief of the village also.”—D. Ch. Sect. II. § 4.

* See ante, p. 837.
(i) Brāhmaṇas.] The plurality, meant, by this word, is restricted to three.—The venerating of Brāhmaṇas is with a view to their asking (the child in adoption.)—Ibid.

(u) Kinsmen.] The kinsmen of the father and mother.* Relations—Sapindas.† The inviting of these is for the sake of witnessing—Ibid. § 6.

Vyavastha. 566. Of the above mentioned ceremonies the gift and acceptance are essentially necessary.

Reason. As in the absence of both of them the adoption is totally void.

Vyavastha. 567. The performance of the homa and the other principal rites is also essential to the completion of an adoption.‡

Reason. Since without the performance thereof the adopted is not vested with the full rights of a son.

Authority. I. It is therefore established, that the filial relation of adopted sons is occasioned only by the (proper) ceremonies. Of gift, acceptance, a burnt sacrifice, and so forth, should any be wanting, the filial relation even fails.—D. Mīm. Sect. V. § 56.

II. Manu propounds a special rule, should the due form for adoption not be observed: "He who adopts a son, without observing the rules ordained, should make him a participator of the rights of marriage: not a sharer of the wealth." The meaning is; the marriage only, of one adopted without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for, without the observance of form, his filial relation is not produced.—D. Mīm-Sect. V. § 45, 46.

III. In case no form, as propounded, should be observed, it will be declared that the adopted son is entitled to assets, sufficient for his marriage.—D. Ch. Sect. II. § 17.

---

* See ante, p. 267.
† See ante, pp. 303, 304.
‡ Should a son be adopted without the observance of prescribed form, his filial relation would not be established, but he would be entitled to assets sufficient to defray the expense of his marriage.—Sutherland's Synopsis, Head Third.
Vyavastha. 568. The non-observance, however, of any of the unessential ceremonies,—such as representation to the king, invitation of friends or kinsmen, and so forth,—does not render the adoption invalid, nor even incomplete.*

Authority. I. ‘Kinsmen,’ (bandhúṇa)—his own and his father’s and mother’s kinsmen. Relations, (jñyáti)—Sapinda. The invitation of kinsmen and the others is for the sake of their witnessing; in the same manner as the invitation of the king; for, both terms are confirmatory of this, in the sense,—“they unite with (badhnanti)’” and “know (Jánanti,”) as their own, the adopted person.—D. Mím. Sect. § 9.

II. “He who means to adopt a son, must assemble his kinsmen,” &c.—This is intended to show that a son known by kinsmen (to have been adopted,) shall take the inheritance, and perform the Shrāddha and the like: and they shall not molest him. The notice given to the king is intended for the same purpose.—Coleb. Dig. Vol. III. p. 244.

III. Notice to the king and convocation of kinsmen are necessary for a seen (or secular purpose,) namely, that the adopter’s brothers and the rest may know the name and class (of the the child,) and so forth, after thoroughly investigating (all circumstances.) For this reason (the purpose not being indispensable,) affiliation is in some instances valid, even without this unessential part (of the ceremony.)—Coleb. Dig. Vol. III. 248.

Remarks. Jagan-nátha says: “The oblation to fire with holy words from the Veda is an unessential part of the ceremony: even though it be defective, the adoption is nevertheless valid,

* The expression ‘Rájá’ has been explained by commentators to signify the chief of the town or village. They seem however agreed, that the notice enjoined and the invitation of kinsmen are no legal essentials to the validity of the adoption, being merely intended to give greater publicity to the act, and to obviate litigation and doubt regarding the right of succession.—Sutherland’s Synopsis, Head Third.

Most of these rules are general; they are not all imperative. The notice to the king may be dispensed with.—Colebrooke’s remark. See Str. H. L. Vol. II. p. 64.

As to notice to the Rájá and invitation of kinsmen, they are agreed not to be absolutely necessary, being merely intended to give greater notoriety to the thing, so as to obviate doubt regarding the right of succession.—Str. II. L. Vol. I. p 83.
for no one admits that the principal object is unattained if an un-
essential part be defective."—"In like manner, should the oblation
to fire be partly omitted in consequence of inability (to complete it)
the adoption is sometimes good in law, as marriage and the like are
valid in similar circumstances."—"If the declared intention be ex-
pressed in these words, 'I give him to you as a son,' and if the accep-
tor's intention be thus expressed, 'I take him as a son,' he becomes a
son: nothing else is required."—Since no one has declared that
filiation is null, if the oblation to fire with holy words from the Veda
be omitted, the validity of adoption, by gift and acceptance only, with-
out such an oblation, is fully proved by reasoning."—See Coleb. Dig.
Vol. III. p. 244—248.

Mr. Colebrooke remarks:—"As to oblation to fire, the ceremony
is prescribed; but the fact of its celebration may be presumed if there
be no proof to the contrary." Then he relies upon the following
dictum of Jagan-nátha:—"The inadvertent omission of a ceremony
would not invalidate the adoption." Again, amongst his remarks ac-
companying his letter to Sir Thomas Strange, the learned gentleman
observes that "the unintentional omission of some part of them by
the adopter would hardly invalidate adoption, though the willful omis-
sion of the whole by him might have that effect: since the perfor-
manee of the ceremony of tonsure or other rite in the family of the
adopter is indispensable to the completion of the adoption."—See

Sir Thomas Strange, on the authority of Manu, Jagan-nátha, Cole-
brooke, Sutherland, and Ellis, observes: "There must be gift and
acceptance, manifested by some overt act. Beyond this, legally speak-
ing, it does not appear that any thing is absolutely necessary. And
even with regard to the sacrifice to fire, important as it may be deemed
in a spiritual point of view, it is so with regard to a Bráhmana only:
according to the constant distinction, in the texts and glosses, upon
matters of ritual observance, between Bráhmanas and other classes;
it being by the former only that the datta-homa, with holy texts from
the Veda, can properly be performed. The other classes, and partic-
ularly the Shaéra, upon this, and other like occasions, perform an
imitation of it, with texts from the paránas. And, even with regard
to the Bráhmanas, admitting their conception in favor of its spiritual
benefit, it by no means follows that it is essential to the efficacy of the rite, for civil purposes; but the contrary is to be inferred; and the conclusion is, that its validity, for these, consists generally in the consent of the necessary parties, the adopter having at the time no male issue, and the child to be received being within the legal age and not being either an only, or the eldest, son of the giver; the prescribed ceremonies not being essential.—Str. H. L. Vol. I, pp. 83, 84.

The first part of Jagajnátha’s remarks, namely,—‘that the oblation to fire (homa) is an unessential part of the ceremony of adoption’—appears to be inaccurate: for when it is explicitly laid down in the Dattaka-mimánśa and other works of paramount authority, that the filial relation of a boy adopted without the observance of the homa and other rites fails to accrue, and the boy so adopted does not inherit the adopter’s property, then the homa and other necessary rites cannot, upon the mere saying of Jagajnátha, be unessential parts of an adoption, neither can the adoption be complete without the observance of the same: (See ante, pp. 871, 872.) His other remark,—namely, ‘should the oblation to fire be partly omitted, in consequence of inability, the adoption is sometimes good in law,’—seems not to be correct in every respect, inasmuch as of the several homas, only the Sátyágyana (which is a supplementary one) can be dispensed with: save and except that, no other homa, necessary in adoption, can be wholly or partly omitted without leaving the adoption incomplete. And as to his remark last quoted,—namely, ‘if the intention of giving and receiving be expressed in the terms: “I give him to you as a son;” “I take him as a son,” he becomes a son, nothing else is required: since no one has declared that filiation is null if the oblation to fire be omitted,—it is to be observed that it has been conclusively laid down in the Dattaka-mimánśa and intimated in the Dattaka-chandriká, which are paramount authorities on the subject of adoption and are followed in practice in preference to all others, that —of gift, acceptance, burnt sacrifice (homa,) and so forth, should any be wanting, the filial relation and even the heritable right fail. Consequently, the assertion that—no one has declared that filiation is null if the oblation to fire be omitted—is contrary to fact. Besides, adoption is permitted on the principle that the adopted son is born again in
the family of his adopting father, and this regeneration can only take
place by the performance of the religious rites ordained: thus much is
manifest from the following dictum of his own: "Birth caused by male
seed and uterine blood is one ground of filiation; the second birth, by in-
vestiture or other ceremonies, is equally a good ground of filiation, by
whomsoever performed. When he who has procreated a son gives him to
another, and that child is born again by the rites of initiation, then his
relation to the giver ceases, and a relation to the adopter commences:
this birth cannot afterwards become null by his erroneously reverting
to his original family." (See Coleb. Dig. Vol. II. pp. 149, 150.)
Further, had the mere gift and acceptance been sufficient to establish
the relation of the adopted as son to the adopter, then the non-perform-
ance of his initiatory ceremonies by the adopter would not have
rendered him a slave. An adoption, therefore, is complete and valid
not merely by gift and acceptance, but the performance of the neces-
sary rites, preceded by a legal gift and acceptance: should any of
them be wanting, the filial relation must also be wanting, as has
been justly concluded in the Dattaka-mimāṃsā. Thus Jagan-nātha's
dictum that, save and except gift and acceptance nothing else is re-
quired (for the validity of an adoption,) is quite erroneous, and as
such cannot be followed in opposition to the doctrine laid down in
those two works, which are of paramount authority in adoption.

The above is also applicable to Mr. Colebrooke's remarks, which
are founded principally upon those of Jagan-nātha. It would seem
that, at the time of writing them, the passages contained in the
Dattaka-mimāṃsā and Dattaka-chandrikā did not occur to the mind
of Mr. Colebrooke, as otherwise he would not have followed Jagan-
nātha in preference to those paramount authorities.

After this, it is unnecessary to criticise the remarks of Sir Thomas
Strange. The only one to be taken notice of is, that he says 'the
Datta-kōma with the holy texts of the Vedas can only performed by the
Brāhmaṇas: the other classes, particularly the Shāstras, upon this, like
other occasions, perform an imitation of it from the Purānas.' But
although no other class than that of Brāhmaṇas are allowed personally
to repeat the holy words from the Vedas, and perform the rites thereby
to be performed, yet, all those classes can, and do usually, employ
Brāhmaṇas to officiate for them in the performance of such rites.
Moreover, according to the Dharma-shástra, as current in this country, it being necessary for the inferior classes also to perform the homa like the Bráhmaṇas, even the Shúdras are, for completion of the religious ceremonies of great consequence, directed to have the homa performed by Bráhmaṇas, as is evident from the following passage of the Dattaka-nirṇaya: "VASHISHTHA—'Nor let a woman give or accept a son, unless with the assent of her lord. A person being about to adopt a son, should receive him having convened (his) kinsmen, announed (his) intention) to the king, and having offered a burnt offering with recitation of prayers (denominated) Vyákriti in the middle of his dwelling.'—Here it being intimated that a woman may give or accept (a son,) and that homa should be performed in the adoption of a son, let it be known that there is no impropriety in her performing the homa through Bráhmaṇas, just as (she does) when completing a voluntary religious ceremony (vrata,) and so forth)—a Shúdra also should act in like manner." By the assertion 'a Shúdra also should act in like manner,' the Kshatriyas and Voishyas are a fortiori entitled to perform the homa through Bráhmaṇas as is actually done by them.

The author of the Dattaka-nirṇaya, in accordance with the following text of Devala, is of opinion that there is no necessity for homa and so forth in the adoption for a daughter's son or a brother's son: "Homa, &c. are not ordained in the (adoption of a) daughter's son and brother's son: the same being valid by the verbal gift alone: this is said by the glorious YAMA." A text of Devala cited in the Dwipóyana Saraswati-vilása.

The following rites and ceremonies are also to be performed by the adopter besides those already mentioned:—

Vyavastha. 564. If, however, the initiatory rites, which should have taken place previously, have not been performed by the natural father, they are, in that case, to be completed by the adopter even, on account of the indispensable necessity of removing the taint of the seed and womb, and for the sake of preserving the order, prescribed for the sake of the performance of the rites in question.—D. Ch. Sect. II. § 22.

Vyavastha. 565. If a boy, whose tonsure has been already performed, be received in adoption, his filiation must be completed by the performance of the upa-nayana, &c. preceded by
the *puttreshti* (sacrifice for male issue,) in case of his belonging to one of the three superior classes, and by the performance of the ceremony of marriage, in case of his being a *Shúdra*.

**Vyavasthá.** 566. Should a boy, who is above five years of age, and whose tonsure has not as yet been performed, be received in adoption, his filiation must be completed, as the case may be, by the performance of tonsure, &c. preceded by *puttreshti*.

**Authority.** I. Filial relation (to the adopter,) of one initiated down to tonsure, under the family name of his natural father, being first barred,—on the repetition of that ceremony, and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of the tonsure, and the other rites, by the adopter, the servile estate of one initiated (by his natural father into that ceremony,) and of him, who has passed his *fifth* year, is intimated: after the performance of that ceremony, and the rest, (by the adopter,) the filial relation is established.—D. Ch. Sect. II. § 27.

'Sacrifice for male issue.'] Since persons of the first three tribes only are competent to perform this, by such persons the filial relation must be completed, through the rites of tonsure, and the rest, preceded by a sacrifice for male issue. But by a *Shúdra* the same even, (is produced,) through the rite of marriage alone.—Thus the whole is unimpeachable.—D. Ch. Sect. II. § 32.

(a) The term *Chádádi* (ceremonies having tonsure at the beginning) being a compound one, termed *a tadgūna sabhigyána bahu-vrthi*, (not including what is signified by the first word) rites commencing with that of investiture would be suggested for persons of a regenerate tribe; but, for a *Shúdra*, marriage would be implied.—See D. Ch. Sect. II. § 26.

Yet, if tonsure have not been performed (by the natural father,) that also must be performed by the adopter: this is already expressed in the Vyavasthá No. 564.

**Vyavasthá.** 567. The marriage ceremony of the adopted must also be performed by the adopter; should
HEAD FIRST.

In reference to Gift:—

**Vyavastha**: 568. The son given in adoption by both of his natural parents, or by his father with the mother's consent, is the best; next to him is the son given by his natural mother with his father's consent; the son given by his father without his mother's consent ranks next to the above; the son given by his mother when his father has died, quitted the order of a householder, or emigrated, is one inferior but valid. The adoption of the son given by his natural mother under any other circumstances, or by persons other than the natural parents, is invalid.*

**Vyavastha**: 569. Should the boy, to be adopted, be an adult, his consent is also requisite.†

**Vyavastha**: 570. The adoption of an only or eldest son, even as an absolute dattaka, is, according to the modern

---

* See ante, pp. 825—828.

† To render the adoption valid and complete, it is necessary that the person adopted should assent, or, being minor, be given by a competent party. On the subject of the legal ability to give a son in adoption, some difficulty exists in extracting a consistent doctrine. The more correct opinion appears to be,—1st, that the father may give away his minor son without the assent of the mother, though it is more laudable that he should consult her wishes,—2nd, that the mother generally is incapable of such gift while the father lives,—3rd. that she, however, on her husband’s death, may give in adoption her minor son, and even during the life of that person, in case of urgent distress and necessity, (see ante, p. 832.) A man, who had permanently emigrated, entered a religious order, or became an outcast, being civilly dead, would be regarded as virtually deceased.—Sutherland’s Synopsis, Head Second.

Texts of law, indeed, are not wanting, prohibiting generally the gift of a son against his will; but it seems a correct construction, that such texts merely refer to the adult son. A minor legally can have no will.—Ibid, Note VIII.

“She may, having her husband’s authority, not otherwise.” The answer is according to the doctrine of the Bengal school, but the followers of the Mīrākharā, in the Benares and Māhārāṣṭra schools, admit the widow’s power of adoption, without authority from her husband, if she have the sanction of his kindred.—Strange’s H. L. Vol. II. p. 63.
lawyers, valid, though immoral;* it is, however, not so, according to the ancient lawyers.

Indeed, none of the holy sages appears to have been of opinion that the adoption of an only son or eldest son, as an absolute dattaka, should ever take place: on the contrary, from the text, “An only son, let no one give or accept, for he is to continue the line of his ancestors,” as well as from the following passage, “nor, though a numerous progeny exist, should an eldest son be given, for he chiefly fulfils the office of a son, as is shown by the following text: ‘By the eldest son, as soon as born, a man becomes the father of male issue,” it is clear that gift and acceptance of an only or eldest son are strongly prohibited.*—The old doctrine must, therefore, be said to be in accordance with the intention of the holy legislators.

HEAD SECOND.

In reference to acceptance,—

Vyavastha: 571. If a boy be received, by the man himself, for whom he is to be adopted, in conjunction with his wife, or by him alone, in case of his being without a wife, such adoption is the most laudable one; next to it is the adoption by a woman

As the husband's kindred may authorise the widow to make an adoption, (See note to Mitakshara on inh. ch. I. Sect. II, § 9;) wherever the authority of the Vyavashevara, Mayotha, and works of the same school is followed, her son's sanction would no doubt be sufficient. It is otherwise in Bengal, where no sanction but the husband's can avail. A written authority is doubtless not indispensable.—Cleobrooke’s Remarks.—See Str. H. L. Vol. II. p. 72.

The adopted must consent: but if, as usually happens, he is an infant at the time he is bound by the act of those by whom he is so given.—Strange’s H. L. Vol. I. p. 76.

A son is also given for the purpose of adoption; this being done as an act of duty to relieve the adopter's distress arising from the want of male issue, no penalty is incurred: the assent required is found in the want of opposition; for, it is a rule that not to forbid is to assent.—Cleob. Dig. Vol. II. p. 106.

The filiation of a son given under the age of five years is legally valid: his then utterance of consent would be taught like the speech of a parrot or the like; there is no authority for admitting, in judicial procedure, words spoken by an infant under the age fit for business: therefore, in ordaining that “both parents have power to give, to sell, or to desert a son,” his assent is required for the gift or sale, if he be acquainted with affairs, or adult in law.—Cleob. Dig. Vol. II. p. 109.

SECTION X.

MERIT AND DEMERIT OF ADOPTED SON’S, IN REFERENCE TO
THE NATURE OF GIFT, ACCEPTANCE, RELATION,
AGE, FORM, &c.

HEAD FIRST.

In reference to Gift:—

Vyavastha: 568. The son given in adoption by both of his natural parents, or by his father with the mother’s consent, is the best; next to him is the son given by his natural mother with his father’s consent; the son given by his father without his mother’s consent ranks next to the above; the son given by his mother when his father has died, quit the order of a householder, or emigrated, is one inferior but valid. The adoption of the son given by his natural mother under any other circumstances, or by persons other than the natural parents, is invalid.*

Vyavastha: 569. Should the boy, to be adopted, be an adult, his consent is also requisite.†

Vyavastha: 570. The adoption of an only or eldest son, even as an absolute dattaka, is, according to the modern

* See ante, pp. 825—828.
† To render the adoption valid and complete, it is necessary that the person adopted should consent, or, being minor, be given by a competent party. On the subject of the legal ability to give a son in adoption, some difficulty exists in extracting a consistent doctrine. The more correct opinion appears to be,—1st, that the father may give away his minor son without the consent of the mother, though it is more laudable that he should consult her wishes.—2nd, that the mother generally is incapable of such gift while the father lives,—3rd. that she, however, on her husband’s death, may give in adoption her minor son, and even during the life of that person, in case of urgent distress and necessity, (see ante, p. 822.) A man, who had permanently emigrated, entered a religious order, or become an outcast, being civilly dead, would be regarded as virtually deceased.—Sutherland’s Synopsis, Head Second.

Texts of law, indeed, are not wanting, prohibiting generally the gift of a son against his will; but it seems a correct construction, that such texts merely refer to the adult son. A minor legally can have no will.—Ibid, Note VIII.

“She may, having her husband’s authority, not otherwise.” The answer is according to the doctrine of the Bengal school, but the followers of the Mītākṣaṇā, in the Benares and Mahārāṣṭra schools, admit the widow’s power of adoption, without authority from her husband, if she have the sanction of his kindred.—Strange’s H. L. Vol. II. p. 63.
lawyers, valid, though immoral;* it is, however, not so, according to the ancient lawyers.

Indeed, none of the holy sages appears to have been of opinion that the adoption of an only son or eldest son, as an absolute dattaka, should ever take place: on the contrary, from the text, "An only son, let no one give or accept, for he is to continue the line of his ancestors," as well as from the following passage, "nor, though a numerous progeny exist, should an eldest son be given, for he chiefly fulfils the office of a son, as is shown by the following text: 'By the eldest son, as soon as born, a man becomes the father of male issue," it is clear that gift and acceptance of an only or eldest son are strongly prohibited.*—The old doctrine must, therefore, be said to be in accordance with the intention of the holy legislators.

HEAD SECOND.

In reference to acceptance,—

Vyavastha. 571. If a boy be received, by the man himself, for whom he is to be adopted, in conjunction with his wife, or by him alone, in case of his being without a wife, such adoption is the most laudable one; next to it is the adoption by a woman

As the husband's kindred may authorise the widow to make an adoption, (See note to Mitakshara on inh. ch. I. Sect. 11, § 9.) wherever the authority of the Vigyaneshwara, Maythika, and works of the same school is followed, her son's sanction would no doubt be sufficient. It is otherwise in Bengal, where no sanction but the husband's can avail. A written authority is doubtless not indispensable.—Colebrooke's Remarks.—See Str. H. L. Vol. II. p. 72.

The adopted must consent: but if, as usually happens, he is an infant at the time he is bound by the act of those by whom he is so given.—Strange's H. L. Vol. I. p. 76.

A son is also given for the purpose of adoption; this being done as an act of duty to relieve the adopter's distress arising from the want of male issue, no penalty is incurred: the assent required is found in the want of opposition; for, it is a rule that not to forbid is to assent.—Coleb. Dig. Vol. II. p. 106.

The filiation of a son given under the age of five years is legally valid: his then utterance of consent would be taught like the speech of a parrot or the like; there is no authority for admitting, in judicial procedure, words spoken by an infant under the age fit for business: therefore, in ordaining that "both parents have power to give, to sell, or to desert a son," his assent is required for the gift or sale, if he be acquainted with affairs, or adult in law.—Coleb. Dig. Vol. II. p. 109.

own gotra, the initiatory rites having tunsure at the beginning, and the
rest, or the investiture of a son to be adopted as a dātaka, are perform-
ed, or if he pass his pupilage, that is, the primary season for investi-
ture, (still) he becomes a son else, (that is, if these take place in a
different gotra, and still the boy is adopted, he does not become a son,
(but) he is termed a slave,”—conclude that, if the natural father and
adopter be of the same gotra, then, even if those ceremonies have
taken place in the family of the natural father, they are virtually per-
formed in the family of the adopter: consequently, a boy adopted
after passing the primary season for investiture shall be a valid dātaka
if received by one of his own gotra; but an invalid one, if adopted by
a person of a different gotra. Further on, the phrase—'invested with
the characteristic thread under family name of the man himself’—being
used, in the following text of Vāśishtṭha:—“Sprung from one fol-
lowing a different śākhā (branch of the Veda,) the given son,
when invested with the characteristic thread, under the family name of
the man himself, according to the form prescribed by his peculiar
śākhā, becomes participant (of the duties) of such śākhā,”—they in-
fer that the investiture alluded to in that text is meant to be perform-
ed by an adopter of a different gotra; and then, from the following
exposition (of the above text) contained in the Dattaka-chandrikā—
"but this must be understood in respect to an adoption taking place
within the primary season for the rite in question, which extends to
the eighth year, otherwise, (in the case of adoption after the expira-
tion of the season,) the capacity of having been able to perform that
rite, during the principal season, being wanting, there would be no
ability for the same at a secondary season, the rite would remain un-
performed,”—they conclude that, when a person is to adopt a son
from a different gotra, he must receive him before the primary season
for the upa-nayana, as in that case he is entitled to perform the rite,
and not in the case of adopting him after the expiry of that season,
and when he is not entitled to perform his upa-nayana if he were re-
ceived after the primary season; a fortiori then, he is not competent
to adopt such a boy after the expiry of that season, since an adop-
tion is not complete and valid without the performance of that cere-
mony: but as the prohibition in question does not apply to an adopt-
er receiving a son from his own gotra, he may receive him even after
the primary season for his upa-nayana. Thus, according to the latter
opinion, the adoption of a boy from a different gotra after expiry of the primary season for upa-nayana is invalid, but that of a boy from the same gotra is valid even after expiry of such period, provided the adoption take place before the expiry of the secondary season for the upa-nayana.

HEAD FIFTH.

*In reference to ceremonies:—*

**Vyavastha.** 578. The adopted son initiated by his adoptive father in all the initiatory rites is the most laudable; next to him is the boy received before the fifth year of his age and initiated in tonsure by the adopter; next in rank is one received after the fifth year but before his tonsure,* and initiated by the adopter in that ceremony preceded by puttreshiti (sacrifice for male issue;) the boy adopted after tonsure but invested with the sacred cord in the primary season ordained for it is neither superior nor inferior, but one adopted after that season and invested with the sacred cord in the secondary season, is an inferior one.†—The adoption of one of a regenerate class after that time, and of a Shúdra after marriage, is invalid.

**Vyavastha.** 579. An adoption is not rendered invalid by the non-performance of an unessential ceremony.

**Vyavastha.** 580. But should any of the essential ceremonies not be performed, the boy so adopted is incapable of inheriting the adopter’s estate, but entitled only to wealth sufficient for his marriage.

**Vyavastha.** 581. Should a boy be adopted after his tonsure, or after the fifth year of his age, his adoption is to be rendered valid by the performance of the upa-nayana and the rest, preceded by puttreshiti, in the adopter’s name and family.

**Vyavastha.** 582. But, by a Shúdra, the same even (is produced) through the rite of marriage alone.—D. Ch.

Sect. II. § 32.

* Some perform tonsure in the first year (of a child’s age,) some in the fifth, some in the third, and some with the upa-nayana: this alternative is in accordance with the family custom.—Commentary on the *Dattaka-Mimadus*. Sans. p. 39.

† See the remarks upon the upa-nayana in the secondary season, as contained in HEAD FOURTH.
own gotra, the initiatory rites having tounser at the beginning, and the rest, or the investiture of a son to be adopted as a dattaka, are performed, or if he pass his pupilage, that is, the primary season for investiture, (still) he becomes a son else, (that is, if these take place in a different gotra, and still the boy is adopted, he does not become a son, (but) he is termed a slave,'—conclude that, if the natural father and adopter be of the same gotra, then, even if those ceremonies have taken place in the family of the natural father, they are virtually performed in the family of the adopter: consequently, a boy adopted after passing the primary season for investiture shall be a valid dattaka if received by one of his own gotra; but an invalid one, if adopted by a person of a different gotra. Further on, the phrase—'invested with the characteristic thread under family name of the man himself'—being used, in the following text of Vashishtha:—'Sprung from one following a different shákhá (branch of the Vedas,) the given son, when invested with the characteristic thread, under the family name of the man himself, according to the form prescribed by his peculiar shákhá, becomes participant (of the duties) of such shákhá,'—they infer that the investiture alluded to in that text is meant to be performed by an adopter of a different gotra; and then, from the following exposition (of the above text) contained in the Dattaka-chandriká—"but this must be understood in respect to an adoption taking place within the primary season for the rite in question, which extends to the eighth year, otherwise, (in the case of adoption after the expiration of the season,) the capacity of having been able to perform that rite, during the principal season, being wanting, there would be no ability for the same at a secondary season, the rite would remain unperformed,"—they conclude that, when a person is to adopt a son from a different gotra, he must receive him before the primary season for the upa-nayana, as in that case he is entitled to perform the rite, and not in the case of adopting him after the expiry of that season, and when he is not entitled to perform his upa-nayana if he were received after the primary season; a fortiori then, he is not competent to adopt such a boy after the expiry of that season, since an adoption is not complete and valid without the performance of that ceremony: but as the prohibition in question does not apply to an adopter receiving a son from his own gotra, he may receive him even after the primary season for his upa-nayana. Thus, according to the latter
opinion, the adoption of a boy from a different gotra after expiry of the primary season for upa-nayana is invalid, but that of a boy from the same gotra is valid even after expiry of such period, provided the adoption take place before the expiry of the secondary season for the upa-nayana.

**HEAD FIFTH.**

*In reference to ceremonies:*

**Vyavastha.** 578. The adopted son initiated by his adoptive father in all the initiatory rites is the most laudable; next to him is the boy received before the fifth year of his age and initiated in tonsure by the adopter; next in rank is one received after the fifth year but before his tonsure,* and initiated by the adopter in that ceremony preceded by puttreshti (sacrifice for male issue;) the boy adopted after tonsure but invested with the sacred cord in the primary season ordained for it is neither superior nor inferior, but one adopted after that season and invested with the sacred cord in the secondary season, is an inferior one.†—The adoption of one of a regenerate class after that time, and of a Shādra after marriage, is invalid.

**Vyavastha.** 579. An adoption is not rendered invalid by the non-performance of an unessential ceremony.

**Vyavastha.** 580. But should any of the essential ceremonies not be performed, the boy so adopted is incapable of inheriting the adopter’s estate, but entitled only to wealth sufficient for his marriage.

**Vyavastha.** 581. Should a boy be adopted after his tonsure, or after the fifth year of his age, his adoption is to be rendered valid by the performance of the upa-nayana and the rest, preceded by puttreshti, in the adopter’s name and family.

**Vyavastha.** 582. But, by a Shādra, the same even (is produced) through the rite of marriage alone.—D. Ch.

Sect. II. § 32.

*Some perform tonsure in the first year (of a child’s age,) some in the fifth, some in the third, and some with the upa-nayana: this alternative is in accordance with the family custom.—Commentary on the Dattaka-Mīmāṃsā. Sansk. p. 59.

† See the remarks upon the upa-nayana in the secondary season, as contained in Head Fourth.
Vyavastha: 585. He has no longer a connection with his natural parents and their families, and the reciprocal duties (a) and rights (i) also become extinct.

(a) By 'duties' is here meant the contracting of impurity, the performance of obsequies, and so forth.

(i) By 'rights' is meant the title to inherit and the like.

Vyavastha: 586. The only relation which still subsists is that of sapinda by the body, that is, through consanguinity; and it is on account of the existence of this relation and so forth, that an adopted son cannot marry in the families of his natural parents.

Authority. I. Manu says: "a given son must never claim the family and estate of his natural father. The funeral cake follows the family and estate: but of him, who has given away his son, the obsequies fail"—It is declared, by this, that, through the extinction of his filial relation from gift alone, the property of the son given, in the estate of the giver, ceases; and his relation to the family of that person is annulled.—D. Ch. Sect. II. § 18, 19.

II. But, although, by the text of Manu, (above quoted,) connection with the family of the natural parent is annulled, what proof is there, as to the connection with the family of the adopter being established? On this point Vrihat Manu declares,—"sons given, purchased, and the rest, retain the relation of sapinda to the natural father, as extending to the fifth and seventh degrees; like this, their general family, (which is) also that of their adopter."—The relation as sapinda, of sons given, purchased, and the rest, to the natural parent, continues: by gift and so forth even, that does not fail; for, by reason of continuing in connection through containing portions (of the natural father,) it is not possible to be removed while the body lasts. By this it is declared, that the relation of sapinda in question is the consanguineal connection only, and not connection by the pinda or funeral cake: for, that this latter is barred, is shown by this passage,—'of him, who has given away his son, the obsequies fail.' Anti-

* See the Section on Marriage, and the clause treating of the sapinda relation.

† See the clause treating of the sapinda relation; and ante, pp. 712—71.
cipating a question as to the extent of this relation as *sapinda*, the
author adds,—'extending to the fifth and to the seventh degrees,' &c.
—D. Mim. Sect. VI. § 9, 10.

III. Therefore, not being otherwise inferable, the relation of *sapinda*,
in the peculiar family (*kula*) of the adopter, as founded only on ex-
press texts of law, must be admitted. Thus it is declared: 'The re-
ation of *sapinda* is of two descriptions; through consanguinity, and
connection by funeral oblations. Of these the relation of *sapinda*
emanating from consanguinity, being obviously barred in the case of the
adopted son, *Hemādri* has determined the relation of *sapinda*, of sons
given, and the rest, in the family of the adoptive father, as extending
only to the third degree.—D. Mim. Sect. VI. § 32.

The consanguineal *sapinda* relation is as follows: "The relation of *sa-
pinda* is by connection with (or by containing a portion of) the same body.
Thus, the son, having sprung from the body of his father, *has* the relation
of *sapinda* (through consanguinity) with his father; so also with the
paternal grandfather and the rest, there existing consanguinity between
him and them through the father. In like manner, having sprung from
the body of the mother, he bears the relation (of *sapinda*) to her, also to
the maternal grandfather and the rest, and the mother's brother, sister,
and the rest, by reason of consanguinity through the mother; so also the
father's brothers and sisters and the rest (by reason of consanguinity
through the father:) the wife commencing to be of the same body with the
husband, (bears the *sapinda* relation to the husband:) the brother and bro-
ther's wife likewise commencing reciprocally to be of the same body, are
*sapindas* by reason of springing from the same body. Thus wherever the
word 'sapinda' (is used,) there consanguinity must be known to exist
directly or indirectly.—Mitākṣhara, A'chāra-kōnda, Sans. pp. 5, 6.

Vyavastha. 587. The *dwayāmushyāyana* (son of two fathers)
becomes a member of his adopter's family, continuing at the same time to belong to the *gotra* (race or general fami-
ly) of his natural father; and his relation with the family of his na-
tural mother also fully subsists, notwithstanding the creation
of his relation with the family of his adoptive mother (a.)

* See the clause on the *sapinda* relation.
† The adopted may retain filial relation to his natural father, in which case he is called *Dwayāmushyāyana*, or the son of two fathers.—Sutherland's Synopsis, Head Fifth.
Vyavastha. 588. The offspring of an anitya dwyâmushyâ-yanâ, however, do not belong to the two gotras, but only to the gotra of the natural father (of the dwyâmushyâ-yanâ).*

(a) Here by 'adoptive mother' is meant the wife of the adopter whether or not she joins him in the adoption or adopts a son by his authority; but where there is more than one wife, there she, of them who joins the husband in adopting a son, or adopts one under his permission, is really the adoptive mother, and no other wife of the adopter, because she having especially received the son in adoption, and thus she being actually the adoptress of that son, another has no claim to be his adoptive mother, but only to be held as his step-mother. If, however, the adopter receive a son singly and not in conjunction with any wife, then all of his wives are equally the adoptive mothers of the adopted, because they, having commenced to be of the same body with their husband,† become, as a matter of course, the mothers of the son adopted by their husband.

Clause First.

On the Sâpinda relation of a dattaka son.‡

Vyavastha. 589. The dattaka being the substitute for the legitimately begotten son (ourasa,) the persons related to the adopter as sapinda, sakulya, samânodaka, and snegotra§ bear respectively the same relation to the dattaka; and the father, grandfather, and great-grandfather of his adoptive mother are related to him as sapindas.

Vyavastha. 590. Where the son adopted was not originally a sapinda, there, in that case, exists between him and the families of his natural parents only the re-

---

* See ante, pp. 846—852. † See ante, pp. 708, Note.

‡ The word pinda signifies either the body or a ball of rice, &c. presented to the menses to the deceased; the word sapinda therefore may denote either one consanguineally related or one connected through an oblation of such funeral ball or cake. See ante, pp. 303—305 and 886, 889.

§ See ante, pp. 303—305 and 657.
lation of *sapinda* by the body or through consanguinity, and there is created between him and the families of his adoptive parents the relation of *sapinda* through oblation-cakes.

**Vyavastha**. 591. In the case, however, of an adopted son's having been originally a *sapinda*, his *sapinda*-relation with the family of his adoptive father is through consanguinity, as well as through the oblation-cake; that with the family of the adoptive mother is through the oblation-cake, and with the family of the natural mother is through consanguinity.

**Vyavastha**. 592. The *sapinda* relation of a *duyamushyad*-yana with the families of his natural parents is both through consanguinity and the oblation-cake, that with the family of his adopter—in case of his being originally a *sapinda*,—is of both descriptions, otherwise through the oblation-cake; and that with the family of his adoptive mother, in either case, is through the oblation-cake.

**Vyavastha**. 593. The relation of *sapinda* by the body or through consanguinity extends to the seventh degree in the family of the father, and to the fifth degree in the family of the mother or maternal grandfather.

Authority. "With the kinsmen, on the side of the father, viz. the procreator (*viṣī*) beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c."—Goutama. Here the word *viṣī* (the procreator) is used, for the sake of comprehending every one, even the natural father of a son given and so forth; not merely the natural father of the son of the wife: for, a text of *Manu* declares, "As for these, denominated from the context, sons though produced from the seed (*viṣa*) of others: they are (sons) of that person from whose seed they severally sprung, and of no other."—They are sons of that person. —This declaration, that they are sons, is for the sake of propounding the connection of *sapinda* (by the body,) and not to establish filial relation.—*D. Mim.* Sect. VI. § 11—13.
Vyasavstha. 594. A dattaka son's relation of sapinda through the oblation-cake extends to three degrees,—the ancestors who eat the remains of the oblations wiped off with kusa grass, being disappointed (in the pārvana shrāddha performed by a dattaka.)

Authority. I. Of the absolutely adopted son, the relation of sapinda, in the family of the adopter, consisting in connection by funeral oblations, extends to three degrees: in the family of the natural father, arising only from consanguinity, it extends to seventh degrees.—D. Mīm. Sect. VI. § 39.

II. "As many as there may be degrees of forefathers: with so many, their own forefathers, let sons given, and the rest associate the deceased: in order, their sons with two forefathers, their grandsons with (saman) one, (should) the same.—The fourth degree is excluded. This (relation of sapinda) extends to three degrees."—Kārśhnājini. See D. Ch. Sect. III § 19, and D. Mīm Sect. VI. § 23.

This is the meaning of the text,—according as the deceased adoptive fathers may be sons legitimate, adopted (absolutely,) or of two fathers: as many degrees as there may be of forefathers, three or six, with so many, let sons given, and the rest, associate them;—that is connect by admixture of funeral cakes.—Of the cases in question, where the adoptive fathers are real legitimate sons (the forefathers with whom their association is to be made,) are three, viz. the father, paternal grandfather, and great-grandfather; where sons adopted absolutely, three, viz. their adoptive father, grandfather, and great-grandfather; and where sons of two fathers, six, viz. their natural father and the other two, and their adoptive father and the other two. And thus it is intimated that those, who are the revered objects contemplated at a pārvana rite, performed by the adopted son himself, are the same at the sapindī-karaṇa ceremony also, celebrated, for the adopted son by his own son: and the sons of an adopted son, should perform his sapindī-karaṇa, with his adopter and two out of the three forefathers of this latter. And in the same manner, the grand sons of the adopted son should perform the same—that is, the association of their own fathers,—by admixture of funeral cakes with (for 'sama' is used by Kārśhnājini, in the sense of this proposition,) the adopted son, the
adopter, and one out of the three forefathers of that person, viz. the father of the adopter. The fourth degree is excluded.—D. Ch. Sect. III., § 20, 21 & 22.

"The sons given, purchased, and the rest, who are adopted from those of his own general family, by observance of forms, acquire introduction into the family (of the adopter.)—But the relation of sapinda, is not included." The meaning is—sons given, and the rest, though adopted from those of his own general family, by the observance of forms only, participate in the family (of the adopter.) But the relation of sapinda is not established in them: and such relation not obtaining in those belonging to the same general family, of course it cannot subsist in those of a different general family. As for this text of VRIDDHA GOUTHAMA, it is prohibitory of the relation of sapinda extending to seven degrees, which might be inferred from analogy to the real legitimate son: or, it bars the impurity for ten days, and so forth, arising from the relation of sapinda.—But, it does not prohibit totally such relation, on account of the several texts, before cited.—D. Ch. Sect. III. § 26.

Vyavastha. 595. But wherever the relation of sapinda is said to extend to three degrees, there the same must be understood to be applicable to the ceremony of sapindkarana, and not to marriage, in which such relation extends to the seventh degree in the family of the adoptive father, as well as in that of the natural father, and to the fifth degree in the family of the adoptive mother, as well as in that of the natural mother.

The relation of sapinda in question does not apply to marriage, but is an universal relation, of that denomination, predefined as extending to the seventh degree in the line of the father, and to the fifth in that of the maternal grandfather.

Thus there is no inconsistency.—D. Ch. Sect. IV. § 9.

Clause Second.—On impurity.

Vyavastha. 596. There is no reciprocal impurity of the absolute adopted son, in the family of his natural father.—D. Ch. Sect. IV. § 1.
Authority. For, relation to his family, and the presentation of the oblations being barred; the extinction of uncleanness is an obvious consequence.—Ibid.

The above Vyavastha, however, relates to a son adopted from a different gotra (race or general family.) Consequently,—

Vyavastha. 597. Where a son is adopted from the adopter's own gotra, there exists reciprocal impurity, for three days, between such adopted son and those belonging to the gotra of his natural father.

This, nevertheless, is on account of the family of the natural father belonging to the gotra of the adopter.

Vyavastha. 598. There is reciprocal impurity for three days between the adopted and his adopter's family.

Authority. "On occasions of birth and death, impurity for three days is ordained for him, who, whether of a different, or of the same, general family, by the will (of the adopter) is initiated and adopted."—So also, "excepting the legitimate son, on the death and birth of the son of the wife, and the rest, a general impurity, lasting three nights, always (a) takes place in every tribe: this is a settled point."—Parāśara. D. Ch. Sect. IV. § 3, 4.

(a) 'Always'] Subsequent even to the investiture of the characteristic thread.—Ibid. § 5.

Remarks. I. As the relation of one, though of the same general family, to the family of his adoptive father, is attained through the observance of form, after the previous extinction of relation to the family of his natural father; there is no distinction between an adopted son of a different general family, (and one of the same.) Therefore, the uncleanness for three days, propounded in the text in question (indifferently for either,) is even proper.—D. Ch. Sect. VI. § 5.

II. "The son given, the son self-given, the son made, as well also the son purchased, and the deserted son, who are always to be cherished, belong to a different family, present distinct oblations and perpetuate a different lineage, and, on occasions of birth and death, become im-
pure for three days." (D. Ch. Sect. IV. § 5.) By this text of Brahmapurāsa, as well as by the text of Prāsāra, cited, the extent of impurity in the case of a son being adopted from one's own race and sapinda relations, not having been defined, sagacious lawyers hold that impurity, in that case, is to extend to the full period.

Others, however, do, in a general way, declare that impurity, in that case also, should be for three days.

Vyavastha. 599. For as many days as impurity is contract-ed by a dattaka or given son on the death of a particular person, for so many days does that particular person contract impurity on the death of the dattaka: such is also the case with the dattaka's son, grandson, and the rest. So this is the sum of it:—the offspring of a dattaka and the family of his natural father contract no impurity on the birth and death of each other. The adopter, his father, and paternal grandfather contract impurity for three days on the death of the dattaka, and on the birth and death of his son, son's son, and he rest: so also do the dattaka and the rest on the death of those ancestors, and on the birth and death of their offspring. There is impurity for one day on the death of the sakulyas from the adopter's paternal great grandfather to the ten degrees ascendant, and on the birth and death of their offspring:

* The full period of impurity is, as ordained in the following text:—A Brāhmaṇ becomes free from impurity after ten days, a Kshatriya after twelve days, a Vaishya after fifteen days, and a Śudra after one month.

† The first opinion seems to be consistent with the intent of the law, because if an adopted son, received from one's own goira and from amongst his sapindas, remain also impure for three days, then what is the difference between him and another dattaka: consequently, it is proper to distinguish him from other dattakas in respect of impurity, in the same manner as, by reason of propinquity, he is preferred to others in respect of adoption. Besides, from the following dictum of the author of the Dattaka-Mūdritaka:—'On the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the (general) union of sapinda, and connexion by identity of family, associated together, are wanting in him: (D. Mīm. Sect. VIII. § 12) it appears that, in his opinion, a son adopted from one's own goira and sapindas is to contract impurity for the full period.

‡ See ante, pp. 303—305.

§ See the text of Marīchi and the interpretation thereof in D. Mīm. Sect. VIII., 7, et seq.
the impurity contracted on the birth and death (as the case may
be,) of the sāmāṇodakaś* and sva-gotraś† is removed immediately after bathing. The females of both sides contract impurity for the same period as the males in the same degree of affinity.

Vyavastha. 600. The dwyāmushyāyana contracts impurity in both families:—his impurity extends to the full period on the birth and death of a member of the family of his natural father: and for three days on the birth and death of one belonging to the family of his adopter.

Clause Third.—On Shrāddha,† &c.

The adopted son, as substitute for the real legitimate son, being the agent of rites, performed by a legitimate son, it follows that he is performer of funeral repasts, the objects of which are the manes, in honor of whom a legitimate son performs such repasts. For:—without difference, relation to the father and other sires of the adopter obtains, in the same manner as relation to the general family, the shākhā (or branch of the Veda,) the family-deity, and family-rules, of that person.


Vyavastha. 601. The adopted son is to perform the adopter’s funeral obsequies, the sixteen shrāddhas‡ commencing with the first and ending with the sapindā-karana,§ the ekoddista¶ shrāddha, and the pārvana∥ shrāddha, &c.

A son of any description must be anxiously adopted, by a man destitute of male issue, for the sake of the funeral cake, water, and solemn rites, and for the celebrity of his name.*—Manu. See D. Ch. Sect. I. § 3.

Vyavastha. 602. But, although the son given be first adopted, yet the legitimate son, existing, he is not competent to officiate in the sixteen funeral repasts (shrāddhas) ending with the sapindā-karana.—D. Ch. Sect. III. § 1.

* See ante. pp. 303—305. † See ante. p. 657.
‡ Shrāddha is an offering made to the names of a deceased ancestor or other persons at appointed times.
§ Post, p. 898. Note.
¶ An offering made to a single ancestor or deceased person.
∥ See ante, p. 20, Note.
**Vyavastha-Darpapa.** 897

**Authority.** For, his superiority in rank is barred by Devala (who says: ) "A real legitimate son being subsequently born, superiority of rank from age does not vest in them:" And a text of Jānyavalkya recites: "Amongst these, the next in order is heir, and presents funeral oblations, on failure of the preceding."—Ibid.

**Vyavastha.** 603. But, on the anniversary of the day of death, the dattaka can perform only the ekodishta skṛuddha, and not the pārvana.

**Authority.** I. Thus Jātikarana: "Annually (pratyabda) let the son of the wife, and legitimate son, perform (obsequies) according to the pārvana form: the other ten sons should perform a rite dedicated to a single person." 'The other ten.':—D. Ch. Sect. III. § 2.

II. Parāshara likewise:—"(A funeral repast,) by the legitimate son, for a father, who has departed this life, on all occasions, is in honor of three ancestors: that, by those belonging to aneka-gotra (more than one family,) (i) is consecrated to a single ancestor, on the anniversary of the day of death.—Ibid. § 5.

(i.) By those belonging to more than one family.'—Meaning those belonging to two families.—Ibid. § 5.

**Vyavastha.** 604. The given son is to perform also the shruddha, &c., of his adoptive mother.♦

For, she alone is the mother of such son.

**Authority.** But, the absolutely adopted son presents oblations to the father, and the other ancestors, of his adoptive mother only; for he is capable of performing the funeral rites of that mother only.—D. Ch. Sect. III. § 17.

**Vyavastha.** 605. A duryāmushyāyana is to perform the shrūddha and other rites, as a legitimately begotten son, in honor of his natural parents, their ancestors and relations, and, as a given son, in honor of his adoptive parents, their ancestors and relations.

♦ He (the adopted son) likewise represents the real legitimate son, in relationship to his adoptive mother, whose ancestry are his natural grandsires.—Sutherland’s Synopsis Head Fourth.
Rea son. His rights, and claims to the families of his natural parents being still the same as before, and those to the families of his adoptive parents being only as of a son given.

Vyavastha. 606. But if the adoptive father died first, (the son) should present the oblation (first) to him; if the natural father, then to the natural father; should both have died (at once,) then let him present first to the natural father, and last to the adoptive.—D. Ch. Sect. III. § 14.

Vyavastha. 607. The dattaka son is also to perform the (other) acts or duties prescribed in the (particular) branch of the Vedas followed by his adopter.

Authority. "Sprung from one following a different shákhá (or branch of the Vedas,) the given son, even when invested with the characteristic thread, under the family name of (the man) himself, according to the form prescribed by his peculiar shákhá, becomes participant of the duties of such shákhá (svo-shákhá-bhák).

Vashishthà. That duty, in which his peculiar (that is, the adopter's) shákhá prevails, is a duty of such shákhá; in this he shares, or is participant, &c." Such rite only as is prescribed by the shákhá of the adopter must be performed by him. This is the meaning.—D. Mîm. Sect. VI. § 49.

Vyavastha. 608. In performing the sapindí-karana,* of his adoptive father, the adopted son must connect him by admixture of funeral cakes, (that is,) associate him with his (the adopter's) father, paternal grandfather, and great grandfather.

Authority. Whatever person, at any time, performs the ceremony of sapindí-karana for any one, he does the same with three fore-fathers only, of that individual;—by this (which is the meaning of what preceded the passage cited) the exclusion of

* Sapindí-karana is the rite of associating the deceased with the manes of the departed ancestors by admixture of pindas, (oblation-balls, or cakes of rice, &c.) It should strictly take place on the anniversary of the day of death; but in case of the deceased leaving an only son, or no son, it may also be performed at any time within one year from the deceased's death after the performance of the fourteen monthly shraddhas called madrikas.
the fourth degree is established. The propounding of the same position, (by the passage in question,) in conformity with the rule of logic,—“a position having been established, its re-introduction is for the sake of a peremptory rule,”—is meant to bar the relation as sapinda (to the adopted son,) of those, who (in the case of a real legitimate son) would have partaken of the wipings of the oblations; by reason of their being precluded therefrom (in the present case.) The author declares this very position (in subjoining) ‘this:’ that is, ‘this relation of sapinda’ (extends to the third degree.*) And thus the general relation of sapinda, extending to the seventh degree, which is propounded in the Matsya-purāṇa, in the text subjoined, is barred by the special rule in question.—“The fourth and the rest in assent are the partakers of wipings, the father and the others participate in oblations of food, the seventh presents the same.—The relation, by oblations of food of these, extends to the seventh degree,”†—D. Ch. Sect.III. § 22, 23.

Vyavastha. 609. Where the adopter himself is dwyāmushyādyana, his sapindi-karana is to be performed with both of his (natural and adoptive) fathers, and their fathers and grandfathers.

Authority. As many degrees, of forefathers as there may be, with so many, their own forefathers, let sons given and the rest associate the deceased.—Kārṣṇājini, cited in D. Ch. Sect. III. § 19. See ante, pp. 892, 893.

Vyavastha. 610. The dwyāmushyādyana is to perform the sapindi-korana of his natural father with the father, paternal grandfather, and great-grandfather of such father; and that of his adopter with his three ancestors as above.

611. Where the adopter or natural father is himself a dwyāmushyādyana, or both are so, there the dwyāmushyādyana son is to perform the sapindi-karana with two sets of ancestors of such father or fathers.

Authority. As many as there may be degrees of forefathers, with so many, their own fathers, let sons given and the rest associate the deceased.—Kārṣṇājini. See D. Ch. Sect. III. § 19; ante, pp. 892, 893.

* See ante, pp. 892, 893. † See ante, pp. 302—305.
Vyavastha. 612. The sapindi-karana of the adoptive mother is, however, to be performed with her husband alone.

Authority. In the performance of the mother’s sapindi-karana with her husband, the oblation-balls or cakes, (presented to the manes) of her father-in-law and grandfather-in-law are to be covered with kusa grass. Thus Garga:—“The oblation cakes of the fathers (i.e. the grandfather and great-grandfather) being covered with kusa grass, the sapindi-karana of the female (i.e. mother) is to be performed with her husband alone; since she, after death, has become one and the same person (with her husband).” “The sapindi-karana of a woman is to be performed with her own husband; since her union with (the person of) her husband is effected by charm, mantra, śūliti and vrata.”—Shrāddha-tattva.

613. But if the father be alive, the mother’s sapindi-karana is to be performed with the paternal grandmother; if she also happen to be alive, then it is to be performed with the great-grandmother.

Authority. “He (the husband) being in esse, the sons are to perform it (the sapindi-karana) with the paternal grandmother.” (The phrase) ‘he being in esse’ is indicative of (the existence of) the husband to whom no shrāddha can be offered. Consequently, in the text of Lāghu Hārīta,—“ She (the mother-in-law) being alive, it must be (performed) with her mother-in-law.”—it is declared that during the existence of (a woman’s) mother-in-law, (it should be performed) with her (the latter’s) mother-in-law, not with the woman’s father-in-law. In some instances that also has been intimated.

614. In the pārvana shrāddha performed by a dattaka son, the ancestors, who enjoy the oblation-food wiped off on a kusa grass, being deprived thereof, only the oblation-cakes are to be offered to the adoptive father,

---

* See ante, p. 867, Note 13.
† A particular text or texts of the Vedas, with the repetition whereof religious rites are performed.
‡ A burnt sacrifice, an oblation to fire.
§ A vow, a voluntary religious observance or imposition of penance or austerity.
¶ See ante, p. 20, Note.
|| See ante, p. 899.
his father and grandfather: and the same are participated in respectively by their wives.

615. On the same occasion the dattaka should also perform the pārvana* shrāddha of the father, grandfather, and great grandfather of his adoptive mother,—whereby the pārvana shrāddha of his maternal grandmother, great grandmother, and great great grandmother shall also be performed.

**Authority.** I. It is intimated, that those who are the revered objects, contemplated at a pārvana rite, performed by the adopted son himself, are the same at the sapindī-karana ceremony also, celebrated for the adopted son by his own son.—D. Ch. Sect. III. § 21.

II. "Where the paternal sires are honored, there certainly are the maternal."—*Ibid.* § 16.

III. "Commencing with the father of the mother, there are considered maternal grandfathers.—Let the sons of daughters perform, for these, funeral oblations as for the father."—Mahīchi. By ordaining (in this text,) funeral oblations in honor of three maternal grandfathers, the pārvana or double rite only is inferred. From the expression—"as for the father,"—an option of performing, for the maternal grandfathers also, obsequies in the form of pārvana, or ekoddishṭa, is not obtained; for, the sentence in question is meant to enjoin the absolute necessity of the performance of obsequies, in honor of the maternal grandfather.—*D. Mim.* Sect. IX., § 4, 5.

IV. But, the absolutely adopted son presents oblations to the father, and the other ancestors, of his adoptive mother only, for he is capable of performing the funeral rites of that mother only.—D. Ch. Sect. III., § 17.

V. Except on the day of death, no separate oblations should be presented to women; since it is said that, they enjoy the oblation-cakes presented to their husbands.

---

* See ante, p. 20 Note.  
† See ante pp. 897, 898.
VI. "A mother tastes with her husband the funeral repast, consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great grandmother with her's."—Dābhā. p. 213.

VII. After the first annual obsequies by the sapinda, whatever is given at the monthly rites to ancestors, by the son of the deceased, his mother (a) has a share of the benefit: this is a settled rule in all systems of religious and civil duties.—Sātāṭa, cited in Colebrooke's Digest, Vol. III. p. 598.

(a). The word 'ancestors' (literally fathers,) intends three paternal and three maternal forefathers, namely, the father and the rest, and the maternal grandfather and so forth; and the word 'mother' intends three female ancestors ascending from the mother, and three other female ancestors ascending from the maternal grandmother.—See Ibidem.

Vyavastha. 616. Should the adopter have many wives, then the adopted is to perform the paurana-shraddha in honor of the father and two other ancestors of that wife alone by whom he was received in adoption.*

Authority. The forefathers of the adoptive mother only are also the maternal grandsires of sons given and the rest, for the rule regarding the paternal, is equally applicable to the maternal grandsires (of adopted sons.)—D. Mīm. Sect. VI., § 50.

* As for what is said by Hemādri, that the precept enjoining the performance of a funeral repast, in honor of the maternal grandfather, refers to the natural grandfather, that is inaccurate; for, it is at variance with the passage, "of him who has given away his son, the obsequies fail." Nor is the capacity of the maternal grandsires, as givers, wanting: for, by reason of their affording their assent to the gift, (as appears from this passage,—'having convened his kindred, &c.') they also are parties to the same. Besides, by this passage,—"the funeral cake follows the family and estate"—the family and estate are declared to be the cause of performing the funeral repast, and the estate of the maternal grandfather also, like that of the father, lapses from the son given. His incapacity to perform the funeral repast, in honor of his original maternal grandfather, is properly declared. Accordingly, Hemādri himself, from not being satisfied with that (just stated) has advanced the other position: "In the same manner, as for the secondary father, a funeral repast must be performed in honor of the secondary maternal grandfather and the rest."—D. Mīm. Sect. VI. § 51, 62.

Besides, the mother’s right having become extinct through the gift made by the father, a fortiori, the right of the maternal grandfather and the rest must cease to exist through the gift by the mother.
Vyavastha. 617. If, however, he was received by none of them, either in conjunction with, or under the authority of, her husband, but by the husband alone, then the adopted is to perform the pārvana shrāddha in honor of the ancestors of all such wives of the adopter.

Reason. Because the husband’s act of adopting a son renders them all adoptive mothers of that son.*

Authority. I. The mother being subject to the power of her husband, her property is divested by his gift; but it is not so in the case of wealth obtained through favor or the like, because there is no subjection in respect of such property. Thus, if a son be adopted by the husband, the wife has a secondary claim to that child, because property is common to the married pair; and the line of the maternal grandfather is the ancestry of the adopter’s father-in-law.—Coleb. Dig. Vol. III. p. 261.

II. If a son be adopted by a man married to two wives, he would have two maternal grandfathers, and would claim as maternal ancestry both their lines of forefathers. This seeming difficulty is thus reconciled: although there be two sets of maternal ancestors, they should be jointly considered as manes of ancestors, and they should be thus named in performing the shrāddha, such a one, maternal grandfather sprung from such a primitive stock; such a one, maternal grandfather sprung from such a primitive stock, to thee (to each of you) this (funeral cake is offered,) and so forth,’ as is done by the son of the wife considered as a son of two fathers.—Coleb. Dig. Vol. III. p. 453.

Jagan-nātha does also say:—“In the double set of oblations, it is indispensably necessary that the son should perform the shrāddha for the paternal line, not for the line of his maternal grandfather: but it is simply comprehensible in one who performs the shrāddha for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors; consequently, since the shrāddha may be performed without noticing the maternal grandfather’s line in a subordinate double set of oblations and the like, the shrāddha for the maternal ancestors is not requisite to the completion of the obsequies performed in the dark fortnight of úswina. This observation of Raghu-nandana

* See ante, p. 880.
and others is accurate. Accordingly, a widow, though she may perform acts of religion without consent previously declared by her deceased lord, cannot (without such consent) adopt a son given; for the text of Vāshishṭha declares: 'let not a woman give or accept a son,' &c. But, if her husband have assented, she may adopt a son given, as a son of the wife (is raised up to a husband by his consent,): else it would have been expressed in the law, 'he shall not be the son of her husband unless (adopted) with the assent of her lord, but shall be her own son, to perform her obsequies and take her inheritance. A son given is, therefore, the child, not of his adoptive mother, but of his adoptive father only: (See Coleb. Dig. Vol. III. pp. 253, 254.) But these being at variance with the paramount authorities above quoted, as well as the subjoined text cited in the commentary on the Dattaka-chandrikā—"Whoever performs the pārvana śrūddha for his paternal ancestors, and does not perform it in honor of his maternal grand-sires, commits the sin of killing his father."—and more especially with his own dicta, are unworthy of respect.

Vyavastha. 618. The dwyāmushyāyana is to perform the pārvana śrūddha in honor of his both fathers and their ancestors.

Authority. I. An aphorism of Sānkhyāyana propounds a distinction, in respect of the observances prescribed, for the dwyāmushyāyana: "Having duly performed the preparatory ceremonial, called avanejana, where there may be a diversity of fathers, both, at each oblation." Where there may be a diversity of fathers, at each oblation, both the natural father and the adopter,—‘let him celebrate’—as is understood.—D. Ch. Sect. III, § 7, 8.

II. ("The adopted son) should perform two funeral repasts, or at one, contemplating them separately, he should designate, at each oblation, both the adoptive, and natural fathers; together with the two ancestors in immediate ascent above each. The text of a venerable saint.—Ibid. § 9.

III. Accordingly Ḫārta:—"Of these, in the first place, the tute- lary saints of the natural father (are those of the adopted son.) He should perform two several sets of funeral oblations, each consisting of two, or designate both, in each (i) oblation (of one set;) his son—in his second, his grand son—in third, (should do the same.)—Ibid. §12.
(i) 'Or in each (eka) oblation,'—here a repetition (of the word eka) is understood on account of the text of Aśāstanta—"If son to both fathers, he should designate both, at each several oblation.—' In his second'] at his oblation to his grandfather, the son of the dwyāmushyāyana. 'In his third'] that is, at his oblation to his great-grandfather, the grandson of the dwyāmushyāyana.—D. Ch. Sect. III. § 13.

Vyavastha. 619. The dwyāmushyāyana is to perform the pārvana shraddha of the two sets of the maternal ancestors as of those of the paternal ancestors.

Authority. Let the issue of two fathers present (oblations) first to the natural father: but the same must be given (to him) last, (should he survive; the adoptive father) being dead. If both have died (together, the oblation must be given,) first to the natural father: after him, the son should present the same to the adoptive father. Should it not be first offered to the natural father, it does not endure." By this, the performance of a pārvana rite, by the son of both fathers, on the death of either even, is shewn. In the same manner, by parity of reason, where there may be a diversity of mothers, the sires of the natural mothers are first designated by a son, who is son to two fathers, at the funeral repast (suggested by the passage subjoined) in honor of the maternal grandfathers: subsequently the sires of her, who is the adoptive mother—"Where the paternal sires are honored there certainly are the maternal."—D. Ch. Sect. § 14, 15, 16.

Clause Fourth.—Succession, &c. of Adopted Sons.

Vyavastha. 620. Deprived of the inheritance of his natural parents and their relations, an adopted son is entitled to inherit from his adoptive father.*

Authority. I. "A given son must never claim the family and estate of his natural father. The funeral cake follows the family and estate; but of him, who has given away his son, the obsequies fail." (Manu.)—'The given son must never claim his natural father's family, and estate.' Thus 'the obsequies,'—that is, the funeral

* See ante, p. 887, Note.
repast (which would have been) performed by the son given, fails of him, who has given away his son. The author of the Chandrikā thus explains: 'By this it is declared, that by the act alone, creating the filial relation, property of the son given, in the estate of his adopter is established, and connection to him as belonging to the same family ensues. But through extinction of the filial relation, from the mere gift, the property of the son given, in the estate of the giver, is extinguished, and connection with the family of the giver annulled.—D. Mīm. Sect. § 6—8. Vide D. Ch. Sect. II. § 18—20, ante, p. 888.

II. The assumption either of the family name or estate, is the ground of the claim; that failing, the son's right to offer a funeral cake to the natural parent fails: his participation in the family and estate of his adoptive father is a true ground of claim, since he may assert the right of offering a funeral cake to his parent. It follows that the son given claims the family and estate of his adoptive fathers. The same remark is made by Raghu-nandana in the Udvāha-tattva: "it appears that the son given shall claim the family and estate of he adoptive father alone, since he cannot assume the family name and estate of his natural parent, nor perform his obsequies, which are signified by the terms—funeral cake—and—funeral oblation." Raghu-nandana explains the word 'Swadhā,' an oblation to be eaten by progenitors. thus, of him who has given away his son, that is, of the natural father, for this is the nearest term, the funeral cake, or oblation to be eaten by progenitors, is extinct: it follows of course, that the funeral cake shall be offered to the adoptive father.—Coleb. Dig. Vol. III. p. 268.

III. Consequently, he who is adopted as a son given, has a right to possess the inheritance and perform obsequies, although there be another nephew. He becomes the son of the adopter, under the rule of Viṣṇu: "He is son of him to whom he is given by his father and mother."—Coleb. Dig. Vol. III. p. 267.

It is the universal opinion of the pandits that at the moment permission to adopt was pronounced, it had the same effect as if a child had been conceived in the womb of the woman, and her intention to adopt under the permission operated, to all intents and purposes, as if she were enceinte; and that the boy subsequently adopted by her had all the rights of a posthumus son.—This opinion has received
corroboration from the pen of Mr. H. Colebrooke, who is followed by Sir Thomas Strange and others. Although in reality, the receiving of such permission by a woman from her husband does not coincide with pregnancy, (for had it been so, the acts performable under that permission would always correspond, and would have been done in accordance, with pregnancy; that is to say, a son would be adopted neither long before nor long after the time for giving birth to a child, but just on the expiry of the period of gestation, nor would a boy born before the date of permission or long after the period of gestation, be adopted, and not to adopt a son would be impossible,) yet its effect is the same as is justly declared by the learned lawyers aforesaid. (See the note in the following page.) Consequently,

*Vyavastha.* 621. The boy adopted by a widow under authority from her husband has all the rights of a posthumous son.*—So that,

*Vyavastha.* 622. On the death of the owner his wife like a pregnant widow can take his property for the behoof of the son to be adopted, and until his attaining majority, she can hold it as mother and guardian.—Consequently,

*Vyavastha.* 623. Even before his adoption, a sale or other disposition of his to-be-father's property will not be valid unless made under circumstances of inevitable necessity, or calamity affecting the family, or for the good of the adopted.*

---

* A boy adopted by a widow with the permission of her late husband has all the rights of a posthumous son, so that a sale made by her to the prejudice of her late husband’s property, even before the adoption, will not be valid, unless made under circumstances of inevitable necessity.—Macn. H. L. Vol. I. p. 70.

* "Should it have devolved upon a widow to adopt, her husband's estate descending to her on his death, adoption subsequent divests her succession, like the case of a posthumous child."—(Strange's H. L. Vol. I. pp. 88, 89.) The widow, in the above case, does not, and can not, succeed, but only receives the property as a holder in trust. See the observation on the following remarks of Mr. Colebrooke.

(Q.) The plaintiff having been adopted by a woman, had she, subsequently, the same dominion over her property that she had before, so that a mortgage of a house by her after that would be good?

(A.) The mortgage under these circumstances would not be good to the prejudice of the adopted, if rightly adopted.

 Presuming the property here spoken of as the woman’s to have been what devolved upon her by the death of her husband, and not to have been her proper stridhan, it ceased to be hers at the moment of a valid adoption made by her of a son to her husband and herself; in the same manner as property coming into the hands of a pregnant widow, by
Vyavastha. 624. If, however, authorised by her late husband, a widow may exercise any power over the property left by him, notwithstanding she had permission to do so.

Vyavastha. 625. But where she is not so authorised, her adopted son is not precluded from quite the same means, cannot be used by her as her own, after the birth of a son. A child is in most respects precisely similar to a posthumous son. From the moment of adoption taking effect, the child became heir of the widow's husband; and she could have no other authority than that of mother and guardian.—Columbia University Libraries. Royal College, London.

Observation:—

The first part of the above remarks does not appear to be quite correct, inasmuch as the law is that heritable right once vested in one cannot be divested from that person another before the former's death, natural or civil, (see ante, pp. 2, 3) and consequently the right vested in that woman could not, so long as she lived free from fault causing disinherison, devolve upon the son subsequently adopted by her. So it would follow that the right of the son, who is the first and foremost of the two, would remain in abeyance until the widow's death. Is not this opposed to the maxims of Hindoo law of all the schools without exception? The learned gentleman seems to have been unmindful of the above universal maxim of the Hindoo law, wise, after considering the woman authorised to adopt, to be like a pregnant woman could not have said that her husband's property devolved upon her and remained until the adoption of the son, but that he would have said consistently with the rule laid down in the Mitaksara and Vaidśa-chintamani, and also the Digest by the gentleman himself (see ante, p. 3, Note.) namely, that she took it over the boon of the son she was to have. According to those authorities (and according to the Hindu law as current in all the schools,) the property devolve on her in her own right as widow, but, it comes in to her hand as in trust for the son to be adopted to her husband. Consequently, 'even before the death or birth of a son to her, the widow has the same right to her husband's property as justly declared (by the said gentleman) to have after the adoption or birth of the son; (that is, the right of a mother and guardian.) Thus there being no distinction between her possession of such property before the adoption or birth of her son and subsequent thereto, she could not exercise her powers over it more than a mother guardian even before the adoption or birth of the son, and, as such, she could deal with it as her own, but is restricted to use it with moderation like a mother: she could not dispose of any part of it except under an indispensable necessity or for the good of her future son (as is justly held by the decisions hereafter.
Vyavastha. 627. Where a legitimate son is born subsequently to the adoption, there the adopted son takes one third, the legitimately begotten son being entitled to two thirds.*

Authority. I. "All these sons are considered as heirs to one having no real legitimate son. But, should a son be subsequently born, no right of primogeniture is attached to them. Of these, those who are equal in class, take a third share; but those inferior in rank, should live in subjection to one of equal rank, receiving maintenance."—Devala. See D. Ch. Sect. V. § 15.

II. "If a legitimate son be born, the rest are pronounced sharers of a third part; provided they belong to the same tribe; but if they be, of a different class, they are entitled to food and raiment only."—Kārvānā. In some copies the reading is "are pronounced sharers of a fourth part."—D. Ch. Sect. V. § 16.

III. In partition made between legitimate and adopted sons, the legitimate son has two shares, and the adopted sons who are of the same class with the father, take one share; but adopted sons belonging to an inferior class, are not entitled to any share: they need only be supported with food and raiment. Nārada declares (this):—"All these sons are pronounced heirs of a man, who has no legitimate issue by himself begotten; but should a true legitimate son be afterwards born, they have no right of primogeniture: such among them as are of equal class, (with the father,) shall have a third part as their allotment, but those of a lower tribe must live dependent on him, supplied with food and raiment.—Dā. kar. sang. p. 110.

* Where a legitimate son is born subsequent to the adoption, he and the son adopted inherit together; but the adopted son takes one third, according to the law of Bengal, and one fourth, according to the doctrine of other schools.—Mann. H. L. Vol. I. p. 70.

Mr. Sutherland, in the third special rule under Head Fifth of his Synopsis, remarks: "Where subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share according to the Dattaka-chandrika."—This finding of his does not, however, appear to be accurate, inasmuch as the doctrine of the Dattaka-chandrika is, that an adopted son is entitled to one fourth if not endowed with eminent qualities, and to one third if he is so; as is manifest from the passage subjoined:—"The rule for succeeding to a third share in the texts of Devala and Kāvīvyana, must be alleged to refer to a son given, endowed with eminent qualities." (D. Ch. Sect. V. § 19, 20.) The above doctrine is also expressed by the
Vyavastha. 628. Not only one legitimately begotten son, but also as many as there may be born subsequent to the adoption of a son, would take severally double the share of the adopted son, who in either case is entitled to one half share of each of the former.

Authority. Sri-dhara Swami, in his gloss on a verse of the Bhagavata, quotes a text of law on the benefit arising from a multitude of sons, to explain the motive for desiring many children, when a subsidiary son (is adopted) even though a principal one be living,—"Many sons are to be desired, that some one of them may travel to Goyū."—The adoption of a son given, although a son of the body be living, being thus valid, he shall have a third part as his share, in the same manner with a son given, subsequently to whose adoption a son of the body was born (according to the text of Devall cited.) "Heirs"—that is, entitled to a full share. "Shall have as their share one third of the property"—that is, they shall have as a share one third part of that which is receivable by the son legally begotten. What shall be the share? Shall the son given receive four or three swarnas out of twelve, which compose the share received by the son of the body? or shall the son of the body receive twice as much as is received by the son given? To this it is answered, if it be the meaning of the law that he shall take one third part out of the share which is received by the son legally begotten, then what would be the consequence if there be many such? the son given would receive an

learned gentleman himself in the following note written in reference to the remark in question. "Receives a quarter share"]—"This rule is founded on texts of Vasishthika and Katyayana, the latter of which, however, is variously read. 'A third part' is substituted by some for the more prevalent reading, 'a fourth part'; the difference being adjusted with reference to the qualities of the claimants," (Synopsis, Note XXII.)—In the present (kali) age, however, it being impossible for persons to be endowed with eminent qualities, such as are required by the law, it has been determined in the Dāsa-krama-sangraha, one of the paramount authorities of the Bengal school, that a dottaka son is to take one-third in the division with a legitimately begotten son subsequently born; and this is followed here in practice.

• If two legitimate sons are subsequently born, then, according to the Benares school, the property should be made into seven parts, of which the legitimate sons would take six, and, according to the law as current elsewhere, into five shares, of which the legitimate sons would take four, and so on in the same proportion, whatever number of legitimate sons may be born subsequently.—Mason, H. L. Vol. I. p. 70.
excessive sum if he took a third part from each. Nor shall he take one share out of the collected wealth, for, though single, he would not receive a full third part, and the legitimate sons would have more (than their due allotments.) Neither is the second supposition right; for, were it so, he would take a quarter (instead of a third.) Thus the last supposition must be admitted. It may be illustrated in this manner: in the case of partition made by a father, according to the opinion of Jímáta-váhana and the rest, let two sons legally begotten take eight swarnas each out of thirty six inherited from a paternal grandfather, let the father take sixteen swarnas, and the son given four. The meaning of the text is, that an adopted son shall have a third part of the share appertaining to a son legally begotten.*—Coleb. Dig. Vol. III. pp. 290, 291.

**Vyavastha** 629. If a person die before his father leaving his wife authorised to adopt, the son adopted by the widow is doubtless entitled to inherit the property of his adoptive father;—he would also be entitled from his adoptive grandfather, provided he was adopted with his knowledge and assent;†—non-prohibition is assent.

**Reason.**

On account of the maxim:—"The intention of another, not prohibited, is sanctioned.—See ante, p. 825.

* The foregoing opinion of Jagannathda's is correct, as regards the extent of an adopted son's share in the division with a legitimately begotten son, who in Bengal takes two-thirds of the heritage, giving the adopted son the remaining third,—but wrong as regards the succession of an adopted son, though received after the birth of a legitimately begotten one, inasmuch as the adoption, during the existence of a legitimately begotten son, being invalid and void ab-initio, (See ante, p. 787 et seq.) the boy so adopted has no title whatever to succeed to the property of his so called adopter. As to the text on the ground of which the above opinion was advanced, it is applicable to sons legitimately begotten, and not to those adopted.—See the Privy council decision at page 802.

† In the case of a Hindu of Bengal dying in his father's life time without issue, but leaving a widow authorised to adopt a son, if such adoption be made by the widow, with the knowledge and consent of her husband's father, at any time before he shall have made any other legal disposition of the property, or a son shall have been born to his daughter in wedlock, no such subsequent disposition or birth shall invalidate the claim of the son so adopted to the inheritance.—Macn. H. L, Vol. I. pp, 70, 71.

The latter part of the above observation of Sir. W. Macneaghden's is not accurate; because, if the birth of a daughter's son cannot invalidate the claim of a son's son subsequently born, neither can it invalidate the claim of a son's adopted son subsequently received

† See ante, p. 825.
Vyavastha. 624. If, however, authorised by her late husband, a widow may exercise any power over the property left by him, notwithstanding she had permission to adopt.

Vyavastha. 625. But where she is not so authorised, the adopted son is not precluded from questioning acts done by his adoptive mother.

Vyavastha. 626. On the other hand, an adopted son is liable for the debts contracted by his adoptive mother under a necessity or calamity affecting the family or for the benefit of that son.

the same means, cannot be used by her as her own, after the birth of a son. An adopted child is in most respects precisely similar to a posthumous son. From the moment of the adoption taking effect, the child became heir of the widow’s husband; and the widow could have no other authority than that of mother and guardian.—Colebrooke’s Remarks.”—See Str. H. I. Vol. II. p. 102.

Observation:—

The first part of the above remarks does not appear to be quite correct, inasmuch as our law is that heritable right once vested in one cannot be divested from that person and vest in another before the former’s death, natural or civil, (see ante, pp. 2, 3 and 9;) consequently the right vested in that woman could not, so long as she lived free from any fault causing disinheritance, devolve upon the son subsequently adopted by, or born to her. So it would follow that the right of the son, who is the first and foremost of all heirs, would remain in abeyance until the widow’s death. Is not this opposed to the prevalent maxims of Hindu law of all the schools without exception? The learned gentleman seems to have been unmindful of the above universal maxim of the Hindu law, as otherwise, after considering the woman authorised to adopt, to be like a pregnant widow, he could not have said that her husband’s property devolved upon her and remained her’s until the adoption of the son, but that he would have said consistently with what is insculpted in the Mītākṣara and Vīśeṣdvīpa-chintāmanī, and also the Digest translated by the gentleman himself (see ante, p. 3, Note.) namely, that she took it or got it for the behoof of the son she was to have. According to those authorities (and therefore according to the Hindu law as current in all the schools,) the property does not devolve on her in her own right as widow, but, it comes in to her hand as a holder in trust for the son to be adopted to her husband. Consequently, even before the adoption or birth of a son to her, the widow has the same right to her husband’s property as she is justly declared (by the said gentleman) to have after the adoption or birth of the son, (that is, the right of a mother and guardian.) Thus there being no distinction in law between her possession of such property before the adoption or birth of her son and that subsequent thereto, she could not exercise her power over it more than a mother and guardian even before the adoption or birth of the son, and, as such, she could never deal with it as her own, but is restricted to use it with moderation like a widow or mother: she could not dispose of any part of it except under an indispensable necessity or for the good of her future son (as is justly held by the decisions hereafter cited.)
627. Where a legitimate son is born subsequently to the adoption, there the adopted son takes one third, the legitimately begotten son being entitled to two thirds.*

**Authority.** I. "All these sons are considered as heirs to one having no real legitimate son. But, should a son be subsequently born, no right of primogeniture is attached to them. Of these, those who are equal in class, take a third share; but those inferior in rank, should live in subjection to one of equal rank, receiving maintenance."—Devala. See D. Ch. Sect. V. § 15.

II. "If a legitimate son be born, the rest are pronounced sharers of a third part; provided they belong to the same tribe; but if they be, of a different class, they are entitled to food and raiment only."—Kātyāyana. In some copies the reading is "are pronounced sharers of a fourth part."—D. Ch. Sect. V. § 16.

III. In partition made between legitimate and adopted sons, the legitimate son has two shares, and the adopted sons who are of the same class with the father, take one share; but adopted sons belonging to an inferior class, are not entitled to any share: they need only be supported with food and raiment. Nārada declares (this):—"All these sons are pronounced heirs of a man, who has no legitimate issue by himself begotten; but should a true legitimate son be afterwards born, they have no right of primogeniture: such among them as are of equal class, (with the father,) shall have a third part as their allotment, but those of a lower tribe must live dependent on him, supplied with food and raiment.—Dā. kar. sang. p. 110.

* Where a legitimate son is born subsequent to the adoption, he and the son adopted inherit together; but the adopted son takes one third, according to the law of Bengal, and one fourth, according to the doctrine of other schools.—Macr. H. L. Vol. I. p. 79.

Mr. Sutherland, in the third special rule under HEAD FIFTH of his Synopsis, remarks: "Where subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share according to the Dattaka-chandrika."—This finding of his does not, however, appear to be accurate, inasmuch as the doctrine of the Dattaka-chandrika is, that an adopted son is entitled to one fourth if not endowed with eminent qualities, and to one third if he is so; as is manifest from the passage subjoined:—"The rule for succeeding to a third share in the texts of Devala and Kātyāyana, must be alleged to refer to a son given, endowed with eminent qualities." (D. Ch. Sect. V. § 19, 20.) The above doctrine is also expressed by the
Remark. The author of the Dattaka-Mimāṃsā holds that, in the case of the adopted son being possessed of good qualities, and the legitimately begotten son destitute of the same, they share equally*:—This rule, however, is now quite inapplicable, adopted sons, possessed of good qualities such as are required by the law, being rare at the present (kali) age.†

Vyavastha. 630. If there be a legitimately begotten son, the dattaka son of a king is not entitled to be invested with empire, although he may have his share in the same.

Vyavastha. 631. But if there be no son legitimately begotten, the dattaka is certainly entitled to be invested with empire.

Authority. But, although the son of the wife, the son given, and the rest may succeed to the general estate, their non-succession to the empire is advanced. Thus, it is ordained in the Vedas—"The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son of a twice married woman, the son self-given, and the slave's son: these six are contemptible, as sons; on failure of the first in order respectively, let him invest the next with filial rights.—But let him not appoint to the empire;‡ the son of a twice married woman, nor a son self-given, nor one born of a female slave."—In the same authority also—"Let not the king invest with empire the wife's son, and the rest.§ (nor) cause to be completed,

* See D. Mīm. Sect. V. § 43.
† See the dattaka's succession to the property of Bandhas.
‡ The non-appointment to empire of the son of the twice married woman, and the other two, which is directed in the latter part of this quotation, holds, even on default of any other son, besides the legitimate son. For, this part of the passage is subjoined as an exception to the preceding part, ("on failure of the first would be respectively, &c.") and their non-succession to the empire, should a legitimate son exist, was declared in this preceding passage:—"A legitimate son existing, let not the king invest with empire, the wife's son, and the rest, (nor) cause to be completed (through) such sons the solemnities for his forefathers."—D. Mīm. Sect. IV. § 26.
§ The meaning is,—A legitimate son existing, let him not invest with empire the son of the wife; and the rest, (nor) cause to be completed, that is, nor cause to be performed (by such inferior sons) the solemnities, meaning the funeral repast and other rites, in honor of his forefathers.—Ibid. § 27.
through such sons, the solemnities for his forefathers, a legitimate son existing. It is replied—if another ordinance of law exist, a special rule, for the sake of conveniences, (must be construed) as conveying even the same meaning. Therefore, the first passage cited, which is declaratory of the right to succession, of the next in order, on failure of each preceding, extends even to the whole empire, as conforming with the texts of Nárada, and the rest, before mentioned: and the latter passage prohibits the equal participation, of the son of the wife, and the rest, if a legitimate son exist: or it refers to a son of the wife, and the rest, unequal in class: otherwise, it would be vexations, were adverse meanings deduced from each passage. If, however, this is admitted (and disregarded,) then (we allege) that, by the passage in question, the appropriate shares of the son of the wife, the son given, and the rest, respectively, are not forbidden, if a real legitimate son exist; but, the investing of such son with empire is ordained (by that author,) after having previously barred the same, in respect to those sons, in case of the existence of a real legitimate son. Thus, the son of the wife, the son given, and the rest, receive the share prescribed for them by the general law. For, grounds for contracting the operation of the same are wanting: nor does the particular passage in question, obstruct its operation: for, that relates to a different subject. Accordingly, their right to inherit is clearly laid down in the preceding passage,—"take shares of the heritage."—Nor can it be said, they participate (merely) in the estate, other than the empire. For the empire also is treated of in the passage in question. The exclusion of the son of the twice married woman, and the rest, from empire, although each preceding in order may have failed, is in virtue of a distinct provision in respect to them.—D. Ch. Sect. V. § 26—28.

Remark. The mode, however, of partition, between the son of the wife, the son given, and the rest, and the legitimate son, which has been propounded in what preceded, does not apply to the Shádra tribe.—Since, in the following texts of Manu and Jáényavalkya respectively, a share, equal to that of the real legitimate son, is prescribed for the son, even by a female slave, of a man of the class in question, and the co-heirship, with the daughter's son, of such son, only when having no brother, is intimated: the equal partition of the son of the wife, the son given, and the rest, with the real legitimate son, while the father lives, and their succession to the moiety of
the share of such son, where the father may be dead at the time of partition, follow *a fortiori.*—And otherwise, there would be a great inconsistency, if, where the son of the wife, the son given, and the rest, took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share with the legitimate son. *Manu*:—"But a son, begotten by a man of the servile class, on his female slave, or on the female slave of his male slave, may, by permission, take a share of the heritage. Thus is the law established." *Jágyavalkya*:—"Even a son begotten by a *Shúdra* on a female slave, may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share, and one who has no brothers, may inherit the whole property; on default of daughter's sons." If according to this authority, where there may be no son of the wife, and the rest, but there may be a wife and daughter, the daughter's son be entitled to share, (with the son by a female slave,) the rule for the succession of the daughter (or other proper heir) would be infringed; therefore, if any even, in the series of heirs down to the daughter's son, exist, the son by a female slave does not take the whole estate, but on the contrary, shares equally with such heir. Accordingly, the text subjoined, must be construed as referring merely to the *Shúdras.*

"A son given being thus adopted, if by any chance a legitimate son should be born, let them be equal partakers of the father's estate." So also in the following text, the equal participation of all lawfully begotten *Shúdras* having been first propounded, the succession to equal shares, of the other sons likewise, is subsequently declared by the sentence, ("if there be an hundred sons") occurring therein. "For a *Shúdra* is ordained a wife of his own class, and no other. Those begotten on her, shall have equal shares; if there be an hundred sons: (the same mode of partition shall obtain.") If the sentence in question be referred to the real legitimate son only, the position contained in it, being obtained from what preceded, its repetition would be unmeaning.—D. Ch. Sect. V. § 29—32.

On the strength of the texts cited, the author of the *Dattaka-chandrika* recognises the heritable right of the son of a female slave, and then by parity of reasoning he holds that—"while the father lives, a *shúdra-dattaka* shares equally with the legitimately begotten son; and a moiety, where the father may be dead."—This, however, cannot here
be followed in practice, the marriage with a damsel unequal in class being prohibited at this (kali) age, and consequently the son born of such a woman not being entitled to inherit, and the heritable right of the son of a female slave being repugnant to the immemorial custom of this country, such right of a śādra dattaka, founded as it is on the ground of the right of the son of a female slave, cannot be deemed valid. As to the texts of Manu and Jānyavalkya, cited as authorities for the heritable right of the son of a female slave, they are applicable to schools other than that of Bengal, where they are repugnant to the immemorial custom, which, according to the text: "the ordinances of Śādhus are of equal authority with the Vedas," and that of Manu: "Immemorial custom is the transcendant law," &c., wherever it obtains, supersedes the general maxims of the law.∗—Consequently, the practice of the good Śādhas of this country being like that of the regenerate classes, the right of a śādra dattaka must here be held to be the same as that of one of a twice-born class.

Vyavastha. 632. The dattaka son is entitled to succeed to his adoptive mother's property, just as to that of his adoptive father's.†

Reason. For he is son not only to the adoptive father, but also to the adoptive mother.†

Legal opinions delivered in, and admitted by, the several courts of judicature, and examined and approved by Sir William Macnaghten.

Q. Is a son given (dattaka) entitled to inherit from his natural father?

R. A given son has no right to succeed to his natural parents, as Manu says: "A given son must never claim the family and estate of his natural father. The funeral cake follows the family and estate; but of him, who has given away his son, the obsequies fail."

Zillah Shahabad, May 13th, 1816.—Macn. H. L. Vol. II. Ch. VI, Case 9, p. 183.

∗ See ante, pp. 314, et sequ. † See ante, pp. 890,897 et sequ.
dhur to Kedar-nauth on the 1st of Assar 1260. B. S. and by Kedar-nauth to plaintiff on the 23rd of Jyce 1269. B. S. The plaintiff added that the defendants had likewise obtained a deed of sale from Gudadhur, and on the strength of it, kept him out of possession.

The defendants (who are special appellants before us) admitted the title of Huree-coomar, but alleged that, on his death, the property went to his widow Jugodumba, and to his adopted son Banees-chunder, that Banees-chunder was in possession of his property long after the date of Guda-dhur's deed of sale to Kedar-nauth, which sale was, therefore, manifestly worthless; Gudadhur having at the time no right in the property.

They add that, on Banees-chunder's death Guda-dhur succeeded as next of kin, and after getting possession sold the land to them under a Kubalal, dated 13th Srabun 1267. B. S.

The Principal Sudder Ameen tried the appeal, and an original suit brought by one Bhlyrub-nauth to prove himself nearest of kin and heir to Banees-chunder, together, and found on the entire evidence, as disclosed in both cases, that Banees-chunder's adoption was not proved, and that the plaintiff's purchase was valid.

The only points urged before us in special appeal are, (1) that the Principal Sudder Ameen acted illegally in trying the two cases together; and (2) that a paluk putro is a good and valid adoption amongst Shudras according to Hindoo law.

The second objection may be disposed of at once, there is but one form of adoption recognized by Hindoo law books for the Bengal por- gince, and there is no distinction made between different castes. The special appellant's pleader has been unable to show any precedent supporting his view of the case, or to point out any passage in any book of Hindoo law which allows of such an adoption.

With regard to the first point taken in special appeal, we do not see in what way the Principal Sudder Ameen acted illegally, on the pleadings in this particular case, the first issue was:—Was Banees-chunder the adopted son of Huree-coomar or not; and this was likewise the first point to be decided in the case in which Bhlyrub-nauth was plaintiff. So far then from the special appellant having been undamaged,
or taken by surprise, he had all the benefit derivable from the evidence adduced by Bhryan-nauth, who, though opposed to him, ulteriorly had an equal object with him in proving Banee-chunder's adoption. He had, in fact, the advantage not only of his own evidence, but of that of another party besides. We see, therefore, nothing illegal in the Principal Sudder Ameen's proceedings, or any ground for allowing this special appeal.

Dismissed with costs.


CASE No. 455 OF 1850.

Perkash-chunder Roy and Others, (Plaintiffs) Appellants versus Dhun-monee Dassea and Others, Respondents.

JUDGMENT.—

II. Messrs J. Dunbar and A. J. M. Mills.—This suit was brought by the plaintiffs to succeed to the property of Mohesh-chunder Roy, as next of kin, to the exclusion of the defendant, who held it as the adopted son of the deceased.

On the first point in the certificate, viz. whether an adoption can be held valid without proof of the due performance of the legal ceremony requisite to constitute a legal adoption, we concur in opinion with Sir R. Barlow and Mr. Tucker, who remanded this case for reinvestigation, that when a claim of adoption is set up, it must be established by positive or strong presumptive proof that the requirements of the Hindoo law have been satisfied.

On the second point, whether in the absence of direct evidence to the due performance of these ceremonies, any or all of the circumstances set forth in the decision of the officiating Judge afford in themselves sufficient proof of a legal adoption having been made, we observe that in ordinary cases the court will not be satisfied with any other natural direct evidence to the due and legal observance of the ceremonies. But the circumstances of this case are peculiar. The direct evidence, though credited by the lower court, was rejected by the judge; but apart from this proof the judge found that the adoption did take place at Benares twenty-eight years ago; that Gyan-chunder
was then an infant; that for nineteen years, or during the life-time of his adoptive father, Mohesh, he was acknowledged and treated by him as his adopted son; that he had him married in accordance with all the usual ceremonies and customs peculiar to Hindoos; that the adopted son performed the funeral obsequies both of his adoptive father and mother, without question on the part of plaintiff; that he was called in public the adopted son of Mohesh, during the life-time of Mohesh, and that the plaintiff and his sharers so designated him in two papers presented by him to the Noabad Moonsiff. These facts seem to us inconsistent with any other natural conclusion than that the ceremonies necessary to constitute a legal adoption were duly performed. We therefore reject the special appeal with costs.

Mr. R. H. Mytton.—I concur generally in the above judgment. The question of what ceremonies are necessary to constitute a legal adoption was argued before me at great length and with great research in the case of Doya-moyee versus Rasbeharree decided on the 29th Sepr. 1852, and I then recorded my opinion, after carefully weighing the conflicting authorities, that all that was essential to a legal adoption in a Soodur family, was the giving and taking the son. It has not, that I am aware, been laid down that no proof other than direct evidence shall be received to establish the giving and taking. It would be manifestly unreasonable to lay down such a rule; for in cases in which the legality of the adoption is not put in issue for a long term of years after its occurrence, it would generally be impossible to obtain such evidence. Mr. Waller has contended that direct evidence having been tendered in this case, the rejection of it as untrustworthy should be conclusive, and the court should not permit the defendant to retreat and rely upon the presumptive proof adduced. The principle thus contended for, has not ever guided our courts. Nothing is more common than the rejection of the direct, and nevertheless the admission of the circumstantial evidence to a fact, and there is in my opinion nothing unreasonable or improper in such a course.

In the present case the presumptive proof of the taking of the son is more convincing than any direct evidence in this country could be. The alleged adopted son lived with his adoptive father as such for nineteen years; he was given in marriage as such by his adoptive fa-
ther; and the plaintiff and a number of other relations of the family, admitted him to join with them under that designation in petitions to the Noabad Moonsiff. The absence of any objection for so long a term of years, and of any proof to the contrary in this suit, is conclusive as to the adopted son having been given by his natural parents.

For these reasons I am of opinion that sufficient proof of a legal adoption has been adduced, and concur in the dismissal of the appeal. The 24th. of January, 1853. S. D. A. D. page 96.

Case no. 386 of 1864.

Regular Appeal from a Decision passed by the Deputy Commissioner of Lohardugga.

Mohragah Juggun-nath Suhae and others, (Plaintiffs)
Appellants versus Musst. Mukhn Koonwar and others, (Defendants) Respondents.

Under the Hindoo law an adopted son has all the rights of a son born. When, however, an adopted son resists his title to succeed to a property on a confirmatory sunnud, he is bound to prove the sunnud.

Case This was a suit on the part of Rajah Juggun-nath Suhae to resume a jagheer held by Agnee Deb Narain, the adopted son of Beharee-lall the former Jagheerdar. The suit was before this Court in 1863, and on the 10th. of July of that year it was remanded to enable the lower court to come to a distinct finding on the following points: 1st whether the plaintiff can resume a Jagheer on the death of Jagheerdar without direct heirs, and bar the right of an adopted son to succeed? 2nd. Was the defendant adopted by Beharee-lall, and then duly recognized as grantee by the Moha-rajah; and was a confirmatory sunnud granted to him? The Lower Court found that from a decision of the agent to the Governor General dated 12th Poos 1234 the plaintiff was at liberty to resume grants made by himself or his ancestors upon the failure of heirs direct of the original jagheerdar. The Judge found, therefore, that adoption was no bar to resumption; but he held that resumption was barred in this case by a confirmatory sunnud granted by the Rajah in favor of the defendant on 16th Assin 1265 Sumbut, and he dismissed the suit.
Vyavastha. 624. If, however, authorised by her late husband, a widow may exercise any power over the property left by him, notwithstanding she had permission to adopt.

Vyavastha. 625. But where she is not so authorised, the adopted son is not precluded from questioning acts done by his adoptive mother.

Vyavastha. 626. On the other hand, an adopted son is liable for the debts contracted by his adoptive mother under a necessity or calamity affecting the family or for the benefit of that son.

The same means, cannot be used by her as her own, after the birth of a son. An adopted child is in most respects precisely similar to a posthumous son. From the moment of the adoption taking effect, the child became heir of the widow's husband; and the widow could have no other authority than that of mother and guardian.—Colebrooke's Remarks.”—See Str. H. L. Vol. II. p. 102.

Observation:—

The first part of the above remarks does not appear to be quite correct, inasmuch as our law is that heritable right once vested in one cannot be divested from that person and vest in another before the former's death, natural or civil, (see ante, pp. 2, 3 and 9;) consequently the right vested in that woman could not, so long as she lived free from any fault causing disinherison, devolve upon the son subsequently adopted by, or born to her. So it would follow that the right of the son, who is the first and foremost of all heirs, would remain in abeyance until the widow's death. Is not this opposed to the prevalent maxims of Hindu law of all the schools without exception? The learned gentleman seems to have been unmindful of the above universal maxim of the Hindu law, as otherwise, after considering the woman authorised to adopt, to be like a pregnant widow, he could not have said that her husband's property devolved upon her and remained her's until the adoption of the son, but that he would have said consistently with what is inculcated in the Mitakshara and Vaidika-chintamani, and also the Digest translated by the gentleman himself (see ante, p. 3, Note.) namely, that she took it or got it for the behoof of the son she was to have. According to those authorities (and therefore according to the Hindu law as current in all the schools,) the property does not devolve on her in her own right as widow, but, it comes in to her hand as a holder in trust for the son to be adopted to her husband. Consequently, 'even before the adoption or birth of a son to her, the widow has the same right to her husband's property as she is justly declared (by the said gentleman) to have after the adoption or birth of the son, (that is, the right of a mother and guardian.) Thus there being no distinction in law between her possession of such property before the adoption or birth of her son and that subsequent thereto, she could not exercise her power over it more than a mother and guardian even before the adoption or birth of the son, and, as such, she could never deal with it as her own, but is restricted to use it with moderation like a widow or mother: she could not dispose of any part of it except under an indispensable necessity or for the good of her future son (as is justly held by the decisions hereafter cited.)
627. Where a legitimate son is born subsequently to the adoption, there the adopted son takes one third, the legitimately begotten son being entitled to two thirds.*

**Authority.** I. “All these sons are considered as heirs to one having no real legitimate son. But, should a son be subsequently born, no right of primogeniture is attached to them. Of these, those who are equal in class, take a third share; but those inferior in rank, should live in subjection to one of equal rank, receiving maintenance.”—Devala. See D. Ch. Sect. V. § 15.

II. “If a legitimate son be born, the rest are pronounced sharers of a third part; provided they belong to the same tribe; but if they be, of a different class, they are entitled to food and raiment only.”—Káravána. In some copies the reading is “are pronounced sharers of a fourth part.”—D. Ch. Sect. V. § 16.

III. In partition made between legitimate and adopted sons, the legitimate son has two shares, and the adopted sons who are of the same class with the father, take one share; but adopted sons belonging to an inferior class, are not entitled to any share: they need only be supported with food and raiment. Náraḍa declares (this:)—‘All these sons are pronounced heirs of a man, who has no legitimate issue by himself begotten; but should a true legitimate son be afterwards born, they have no right of primogeniture: such among them as are of equal class, (with the father,) shall have a third part as their allotment, but those of a lower tribe must live dependent on him, supplied with food and raiment.”—Dá. kar. sang. p. 110.

* Where a legitimate son is born subsequent to the adoption, he and the son adopted inherit together; but the adopted son takes one third, according to the law of Bengal, and one fourth, according to the doctrine of other schools.—Macn. H. L. Vol. I. p. 70.

Mr. Sutherland, in the third special rule under HEAD FIFTH of his Synopsis, remarks: “Where subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of heritage with such son, receives a quarter share according to the Dattaka-chandrika.”—This finding of his does not, however, appear to be accurate, inasmuch as the doctrine of the Dattaka-chandrika is, that an adopted son is entitled to one fourth if not endowed with eminence qualities, and to one third if he is so; as is manifest from the passage subjoined:—"The rule for succeeding to a third share in the texts of Devala and Káravána, must be alleged to refer to a son given, endowed with eminence qualities.” (D. Ch. Sect. V. § 19, 20.) The above doctrine is also expressed by the
not as stree-dhun, but in the ordinary course of inheritance, and it may be as well explained to us by Baboo Kishen-kishore, that the reason why the adopted son is excluded from the succession in such cases, is that he is adopted into his adoptive father's family, and not into his mother's family and cannot perform the shrad of his maternal grandfather though he can perform that of his adoptive mother, but with regard to stree-dhun which the court have held the property in dispute in this case to be, the adopted son, in the absence of a will, would succeed to it after the daughters as a son born, and such being the case, we think it immaterial whether a will was executed or not in favor of the plaintiff by Nobo-moonjuree.

It is scarcely necessary for us to go into the question whether a woman can or cannot execute a will, though it does arise in this case, we think that a woman cannot execute a will regarding any property she inherits in the usual course from her husband or her father, for in this she has but a life interest, but it is otherwise with stree-dhun which she is at liberty to dispose of at her pleasure either by gift or will or sale except in the case of immovable property given to her by her husband. It has also been asked by the learned counsel for the respondents, whether a son adopted by one wife, would be looked upon as the son of a co-wife and succeed to her property. Though this question does not arise we may point out that the Hindoo law of inheritance provides even for this case, and mentions the son of a contemporary wife among the heirs of a woman entitled to succeed to her stree-dhun.

In the case before us as the Court has found that the adoption is valid, and that the property in dispute belonged to Nobo-moonjuree as stree-dhun, we now hold that plaintiff, as her adopted son, is entitled to succeed to that property in the absence of daughters,* whether there be or be not a will in his favor. It is, therefore, unnecessary for us to go into the genuineness of the will, and we affirm the former decision of this Court and charge the Respondent with all costs. The 25th of May 1825. Sutherland's Weekly Reporter, Vol. III, page. 49.

* The disputed property held to be Stree-dhun is of the Joutaka description by reason of its being given to the woman at the time of her nuptials; had it been of any other description of stree-dhun, the son would have succeeded together with a daughter having a son or capable of bearing a son, and not in default of (all) daughters. See ante, p. 733.
CASE No. 541 of 1847.

Baman Doss Mookerjee and others, Appellants, versus Tarinee alias Shoya-munee Debea, Respondent.

CASE No. 166 of 1848.

Tarinee alias Shoya-munee Debea, Appellant, versus Bamon Doss Mookerjea and others, Respondents.

These are two regular appeals brought against the decision of the Principal Sudder Ameen of Nuddea, dated the 20th of September 1847, in a suit brought by the plaintiff, Musst. Tarinee alias Shoya-munee Debea, on her right of inheritance as widow of her deceased husband, Chunder Bhoosun.

These cases being called on for hearing, the appellants in case No. 541 objected that the plaint could not be admitted, as it contained in fact two conflicting claims,—one on the part of Tarinee, widow of Chunder Bhoosun, advancing her own right to succeed to his estate as his widow, and another in behalf of her son, hereafter to be adopted, under permission from her husband.

Plaintiff sets forth that she is (under the deed of division made by Mohadeb, the common ancestor of the branch of the family with which she is connected,) heir to her husband, and the rightful owner of the deceased’s estate; and that she is proprietor of her husband’s share, as is her son to be adopted.

The defendant, Bamon Doss, answers that plaintiff can only sue for possession, when she has made an adoption, as on the part of the child adopted; or on her own part, for maintenance as widow of the deceased; and residing as she does in her brother’s house, she cannot on the strength of the permission to adopt, without proving the anoo-muttee-putter, sue for possession.

The other defendants answer to the same effect; and add that plaintiff declares her intention to adopt, and sets forth the to-be-adopted son’s claims, notwithstanding which she comes in for her own right, in opposition to these claims,—the one claim being destructive of the other.

As, however, the appellants have abandoned the plea that it is a double plaint, we need only remark that it is clear to us that the
plaintiff has come in on her own part, claiming the present enjoyment of the share of her deceased husband by right of succession to his estate, as his widow.

Judgment on the Right of the Plaintiff to Sue.

It being contended against the plaintiff, Tarinee Debea alias Shoyamunnee, that since there is such a mention, distinctly made, of authority to adopt, in her plaint before the Court, her personal right, as widow, must be taken, upon her own statement, to have lapsed,—the right vesting, from the date of her husband's death, in the boy thereafter to be adopted by her, according to the principles of Hindoo law, and specially according to the precedent in the case Bijoyah Debea versus Shama-soonderee Debea, (Sudder Dewanny Adawlut Reports of 1848, pp. 762 to 766) we have, after a full and careful examination of the question, and with the advantage of a very protracted discussion, and of a minute examination of all the authorities, by the pleaders of the parties in this appeal, come to a conclusion differing from that of the majority (Messrs. Tucker and Hawkins,) who ruled the point in the recent decision, in the case above cited of Bijoyah Debea versus Shama-soonderee Debeah; and are of opinion that fact of an authority to adopt a son being possessed by a widow, does not supersede and destroy her personal rights as widow; and that those rights continuing of force till an adoption is actually made,* there is no bar to the admission of the present claim by the plaintiff as widow.

The subjoined extract from the decision in question shows all the grounds on which it rested. These grounds, it will be seen, are the opinion given by the pundit on the question put to him in that appeal, and the opinions of the pundits in Ranee Kishen-munnee's case, (Reports, Sudder Dewanny Adawlut, vol. III. p. 228.)

"Messrs. Tucker and Hawkins.—' This plaintiff sues for her share of the estate as heir to her deceased son; and in her plaint sets forth that she has power from her husband, in the event of her born son's death, to adopt a son. The question was put to the pundit of this Court, whether a widow, with power from her husband to adopt a son, can sue as heir in her own right for a share of the ancestral estate?"

* This seems to be inaccurate for the reasons set out in the observation on Mr. Colebrooke's remarks. See ante, p. 908.
The pandit replied distinctly that she cannot. In fact, it was laid down by the pandits in the case of Rance Kishen-munee, appellant, versus Rajah Woodwunt Singh and another, respondents, (p. 228, Vol. III. Sudder Dewanny Adawlut Reports,) that the moment permission to a widow to adopt a son was pronounced, it had the same effect as if a child had been conceived in the womb of the widow; and her intention to adopt, under the permission, operated, to all intents and purposes, as if she were enceinte; and that the boy, subsequently adopted by her had all the rights of a posthumous child. It thus appears that the plaint in the present case cannot be sustained. The plaintiff declares, she has a power to adopt; her plaint, therefore, is much the same as if she had sued as heir alleging that another existed having a right by inheritance prior to her own."

The case of Rance Kishen-munee, which is the other ground on which the judgment of Messrs. Hawkins and Tucker proceeded, is one which turned on a point perfectly distinct from that now before us. The point in that suit was whether retrospective right could be claimed by a son after he had been adopted, so as to bar a sale made by his adoptive mother, previous to his adoption, to the injury of the rights at that time contingent and eventual, but which actually accrued to him upon his adoption. In that case, the son, when adopted, became an undoubted heir; and it was of course the correct doctrine that no sale, made by a widow, who possesses only a very restricted life interest in an estate, could have been good against any ultimate heir, whether an adopted son or otherwise, unless made under circumstances of strict necessity. The case, then, stands by itself, and affords no general precedent, although, even if it did, it would relate only to the rights claimable by an adopted son, after adoption made.

Now, there is no doubt as to the declared right of a widow in Bengal to succeed to her husband's estate upon his death, in default of lineal male heirs, down to the great grandson in the male line. This is a right certain and incontestable. It is not urged, on the other hand, that there is any direct text, enjoining that, in the event of the pregnancy of a widow on the death of her husband, her right to succeed shall be held in abeyance, until it be seen whether she is delivered of a male or a female child. The argument as to a widow who has a permission to adopt, is only that according to the dicta of the pandits,
she is to be regarded as 

Although it is not urged by the appellants in the case No. 541, yet it is the universal rule of the Hindoo law that a woman supposed to be pregnant can take her husband's share of property, not in her own right as widow but for the behoof of her son to be born. See the footnotes at page 908.

† Ram Chishan-munnes's case, above referred to, (Select Reports, Vol. 111. pp. 228-231) and that of Ram-kishen Sarkeyl's (Ibid. page 367.)

‡ The right of an 

The result of the above finding would, therefore, be that an adopted son, when adopted, shall not be vested with his father's property, though it is provided by the law that it must devolve upon him immediately on his being adopted, but that the widow shall continue to hold it in preference to, and to the exclusion of, the son, the best and foremost of all heirs. This is as illegal as absurd.
"That is declared by Vishnu 'sons with whom the father has made a partition, should give a share to the son born after the distribution.' Jāgatavaleya:—'When the sons have been separated, one afterwards born, of a woman equal in class, shares in the distribution. His allotment must positively be made out of the visible estate, corrected for income and expenditure.*

A strong illustration to the same effect is to be drawn from the law of partition, according to the Mitāksharā, in which it is laid down, (Chap. VI. Sects. 11 and 12,) that if the pregnancy of a brother's widow be manifest at the time of an intended partition, the partition should be postponed till after the delivery. Some commentators hold the sense of the passage to be that partition may at once take place, but that a share should be set apart for the widow who is supposed to be pregnant, and, when she is delivered, the share is to be assigned to her son, and this interpretation is rejected by others, chiefly because, according to the law of the Western schools in regard to an estate still undivided, 'widows are not entitled to participate as heirs.'†

Of authorities, other than the direct text of the law and commentaries, the following may be quoted:—

* Chap. VII. Sect. 11 to 12. See also the Dāya-krama sangraha, as to the right accruing to sons afterwards born. Chap. V. Sect. 21 to 24.

But the above is the subject of an altogether different chapter which refers to the partition of the paternal property amongst the sons in existence, and provides for the son (if any) then conceived but not known, or afterwards conceived and born, laying down that sons should not divide the patrimony whilst there is a probability of another son being born, but if they nevertheless divide it, they must in that case, contribute portions from their respective shares to make up the share of their after-born brother. But in the case of the mother's or step-mother's pregnancy being known no partition could legally take place unless they set apart a share not for the mother, but for her son to be born. Thus the above does not apply to the present case. (See ante, p. 261.) And as the chapter in question does not treat of the inheritance of a widow, whose right is limited to a restricted life interest, and who, being as she is entitled only where there is no son, son's grandson in the male line, can by no means have a heritable right where a posthumous son is to be born, and inherit prior to such son, the texts in question cannot serve as authority for the position above laid down.

† The judgment of the latter (set of commentators) must be pronounced to be erroneous, insasmuch as the share which is received by a pregnant widow is not received in her own right, but as a guardian, or prochēia amīc, for the behoof of her to-be son. (See ante, pp. 3, 908.) Therefore, the circumstance of the estate being joint or divided being no bar to the inheritance and participation of a son, the interpretation given by the first set of commentators is only right.
Macnaghten's Hindu Law, Volume I. p. 2.—"The most approved conclusion appears to be that the inchoate right arising from birth, and the relinquishment by the occupant (whether effected by death or otherwise,) conjointly create this right,—the inchoate right which previously existed becoming perfected by the removal of the obstacle."

II. Colebrooke in Strange, Vol. II. p. 157.—"Presuming the property here spoken of as the woman's, to have been what devolved upon her by the death of her husband, and not to have been her proper stree-dhsu, it ceased to be hers at the moment of a valid adoption, made by her, of a son to her husband and herself; in the same manner as property, coming into the hands of a pregnant widow, by the same means, cannot be used by her as her own, after the birth of a son. From the moment of the adoption taking effect, the child became heir of the widow's husband and the widow could have no other authority but that of mother and guardian."

The only means of evading the application of this opinion so weighty and so directly to the point, has been by arguing that it was given in regard to a Madras case, and had reference to the law of the Mālksharā.

Dictum of the Privy Council in the case of Dhurm Doss pandey versus Shama Soondree Debeah.—Moore's Rep. Vol. III. p. 243—"Now that, upon the authorities, there can be no doubt that that is the result of an act of adoption, because the property is in the widow from the death of the husband till the power of adotion is exercised; then, that adoption divests it from the widow and vests it in the adopted son."

A case may also be cited from the manuscript papers of Sir E. H. East, in Morley's Reports, (vol. II. p. 18,) in which, incidentally, the same opinion is very strongly expressed.—"Since the defendant had come to the age of 16, the widow had given up the property entirely to his management and benefit, which was a strong corroborative of

* This definition of the cause of the heritable right is not according to the doctrine current in Bengal.—See ante, p. 3. Note.

† But see the observation upon this remark of Mr. Colebrooke. Ante, p. 908.

‡ The observation contained at page 903 and the footnotes at the preceding page apply to this also.
the truth of the defendant's case, because the widow herself had actually by the adoption deprived herself of a life estate.\footnote{In the above case it had clearly appeared that, the widow having voluntarily abandoned the property, it had vested in the adopted son; but if she had not so abandoned it, she could not have been divested of it so long as she lived or continued free from any of the defects causing disinheritance. Moreover, it does not appear that property had vested in the widow in her own right as heir at law, it might be that she held it as a holder in trust for her son. But how could it be certain that the plaintiff in the present case would relinquish the property and give it up to the adopted son? If she got the property as heir at law, then none could compel her to give it up, and the adopted son could not get the property, unless she could be caused to give that up; nor could a decree be made upon the belief that she would voluntarily abandon it. The circumstances of the above case being therefore different from those of the present, the former cannot serve as a precedent in the latter.}

A passage, in Colebrooke's Digest (Vol. II. p. 505) has been referred to, in which birth is spoken of, 'as a particular relation of body, not a relation taking place at the first instant of procreation.' The \textit{pundit} of this Court, in his first \textit{Vyavasthā} in Kuroonamyce's case, says: 'Birth was two fold. It might be referred to the period of conception or of actual production.' In the marginal note by Mr. J. C. C. Sutherland, (a gentleman whose opinion on points of Hindoo law is deserving of much respect,) to the case of Lukkipria,\footnote{S. D. A. Reports, Vol. V, p. 315; ante, p. 225.} he has introduced the words:—'Right of succession cannot remain in abeyance in expectation of the future production of such heir, not conceived at the time of succession opened.' It has been urged that Hindoo rules and family customs have established a period in the sixth month of pregnancy, from which conception, in a legal sense, can be calculated. These, however, are very feeble grounds: and it is obvious that the fanciful analogy, which has been contended for, between a real pregnancy, and a constructive pregnancy through a permission to adopt, will here fail; for the argument has been that the right vests in the child to be adopted \textit{from the moment that permission to adopt is pronounced by the husband}, and not from the sixth month, or any other period after that.

The truth is, that the supposition of a position of a positive and actual right, vested in an embryo, which may never come into full existence, is one which must almost be rejected on the mere statement of it. It is particularly repugnant to reason in the case of a possible adoption, which may be made after the lapse of many years, or may never be made at all. If the supposition were to be admitted and
acted upon, the effect would be to alter the whole course of natural inheritance;* for there would be one course of inheritance as from the son to be adopted, and another (as is usual at present) from the widow's husband, upon her own death. The rights, for instance, of any daughters of the husband would, in the former case, be wholly set aside.*

We are, therefore, of opinion that a decree must pass in favour of plaintiff for her husband's share of the above mentioned property,† as well as for that which, it is admitted, descended from Mohadeb to his heirs, and was held by the defendant Bamun Doss,—Sudder Reports, the 30th of September 1850.

This decree has been affirmed by the Privy Council.

Remark—The above decree as well as that of the Privy Council in the case of Dhurm-doss Pandey seems to have been based upon the remark of Mr. H. Colebrooke who first fell into error. We, however, are laid to suppose that at the time of writing the opinion in question it did not occur to the mind of that learned gentleman that, according to the law, which he was administering, the right once vested in one could not be divested from that person and be vested in another as long as the former lived, or continued free from any of the faults causing disinheritance, or voluntarily abandoned it; or else that scholar was not the person to write so unfounded a remark. Misled by that erroneous remark the Sudder Court accordingly passed the above decree. I do not say that the Court were wrong in making the decree in favor of the widow, but I do say that they did not act consistently with Hindoo law in passing the decree in her own right as widow and heir and holding at the same time that, as soon as a valid adoption should be made by her, she must be divested of the property already vested in her, and that the same must vest in the

---

* This does not appear to be accurate, for, if a son were adopted, there would be no change in the order of succession, as in that case the heir of that son would succeed after him; and if a son were not adopted, in that case the apprehension of the succession of the heir of such son, to the exclusion of the heir of the former owner, on the ground of the decree having been made in right of the son, is quite groundless; because, when the expected son did not at all come into existence, the property reserved as his must, owing to his non-existence, exclusively belong to the heir of the original proprietor in the same manner as it would have been in the case of the late owner's death without issue male down to the son's grandson.

† The mention of this property is not quoted here from the original decision.
son. The wording of the above decree ought, consistently with Hindoo law, to have been "decree in favor of the widow for her husband’s share of the property which she is to get for the behoof of the son to be adopted."

This slight change in the ground or form would have made the decree consistent with the universal principle as laid down in the Milákhara &c. (See ante, pp. 3 & 908) and at the same time subservient to the court’s intention, as in that form, there would be no legal impediment to the succession of the son, no injury to the widow, and no change in the order of succession;—the son being enabled to inherit the property as soon as adopted, the widow having the same benefit under it as it was contemplated under the decree in question, (for, whether the property sued for was decreed to her in her own right or in right of her to-be son, the effect as respected herself would be the same, namely, in both cases she would only have a restricted life interest as prescribed by the law,) and as in the case of a foetus being born dead, or a living daughter, the then preferable heir of the former owner is entitled to the property reserved for the foetus, so also would be the case in the instance of non-adoption of the son.

RANEE KISHEN-MUNEE APPPELLANT, VERSUS RAJAH WOODWUNT SINGH AND RAJAH JANKEE-RAM SINGH, RESPONDENTS.

Cases bearing on the vyavastha’s Nos. 621—623.

I. This action was instituted by the respondents against the appellant and Ranie Joy-munee, to establish their proprietary right to Turuf Kunkura-kurpore, &c., situate in Zillah Rajshahye, and to recover the profits which had been unduly appropriated from the estate by the defendants. The plaint was to the following effect. Ranie Kishen-munee had been left by the will of her late husband, Muhab-rajah Bishwo-nath Roy Bahadoor, sole possessor and manager of all his property, real and personal. She was his third wife and in the same will her deceased husband invested her with authority to adopt a son, by reason of his having died childless. The estate now claimed had been mortgaged in her husband’s life time to one Jogomohon, and the period fixed for the foreclosure of the mortgage had

* See the cases bearing on the vyavastha’s Nos. 621,623.
nearly arrived under the provisions of Regulation XVII of 1806, when Kishen-munee, with a view to avert that event, made a conditional sale of the lands to the plaintiffs for the sum of 65,901 rupees. A regular deed of sale was executed, and a written agreement was entered into by the seller, that, in the event of her inability to repay the sum borrowed, with interest, within the period of one year, the sale should become absolute. Of the purchase money, 2570 rupees were paid to Kishen-munee for the purpose of defraying the expenses attendant on the worship of the idols, and the remainder was, with her consent, applied to the liquidation of the mortgagee’s debt, and deposited in court for that purpose. On the expiration of the term of one year, as the time had arrived for making the sale absolute, the plaintiffs made a summary application to the Judge of Rajshahye to enforce the written agreement. Accordingly a written notice was served on Kishen-munee. The defendant, Kishen-munee, replied by admitting the loan as stated by the plaintiffs, but she averred in defence that the loan was usurious; that she had, with the permission of her husband, adopted a son named Gobind-chunder Roy, whose right to the estate was indefeasible, and who could not legally be deprived of the property by any act of hers, which might prove contrary to the rules of Hindoo law, that she had offered repayment of the money borrowed, the receipt of which, however, the plaintiffs had evaded. The defendant Joy-munee replied by denying the allegation of the other defendant.

On the 27th of July, 1819, the Senior Judge of the Court of Appeal gave judgment in this case, and possession of the estate claimed was decreed to the plaintiffs, with costs.

An appeal was preferred to the Court of Sudder Dewanny Adawlut from the above decision by Ranee Kishen-munee, and the second Judge (C. Smith,) before whom the case originally came to a hearing, after directing further evidence to be taken with respect to the facts of the case, referred the following question of the law for the opinion of the pundits:—‘Supposing Bishwo-nath Roy, the husband of Kishen-munee, to have authorised her to adopt a son, was she at liberty to make the conditional sale of her late husband’s estate? in other words, was such estate the property of her or of the child, to adopt whom she had received permission?’ To this question the pundits replied, that Kishen-munee, having been duly authorised by her late husband to adopt a son, and having been appointed manager of his
estate, was not at liberty to make a conditional sale of that estate for any purpose, inasmuch as, at the moment permission to adopt was pronounced, it had the same effect as if a child had been conceived in the womb of the widow, and her intention to adopt under the permission operated, to all intents and purposes, as if she were enceinte; that the boy subsequently adopted by her had all the rights of a posthumous child; and that Kishen-munnee had no right whatever to do any act tending to injure his property, especially to make a conditional sale of the estate, which evidently left him in no better condition than if the original mortgage had never been redeemed; that, in fine, the right of property vested in the son, subsequently adopted, from the time of the Rajah's death, and that the adopting widow had no authority but that of intermediate management under her late husband's will.

Authorities. Manu:—"The children who are born, those yet unborn, and those in the womb, are equally entitled to maintenance; the privation of which is not sanctioned by law." Smriti:—"Let the judge declare void a sale without ownership and a gift or pledge unauthorised by the owner." The second Judge, having perused the above opinion and the additional evidence which had been called for, recorded his opinion that the decree of the Court below should be amended. It was evident, that he was of opinion that an illegal deduction from the loan had been made by the lenders, as well from the positive evidence of witnesses as from the presumption arising from the universal practice of the bankers of this country. Had this not been the case, a larger sum than was due to the original mortgagee would not have been inserted in the written obligation executed by the borrower; more would not have been borrowed than would be sufficient to redeem the mortgage and pay the price of the stamped paper used in the second transaction. The delivery of more than this has not been proved satisfactorily. Any attempt to take more than the legal interest, whether by deduction from the loan, or by any means or device whatever, has been prohibited by Section 9, Regulation XV, 1795. There appeared to him to have been great want of faith on the part of the respondents in this transaction; and he moreover held it to be established, by the exposition of the law delivered by the Court pandits, that the landed property of the late Rajah Biswo-nath Roy belonged of right, not to his widow, but to the son adopted by her in pursuance of the permission granted.
by her deceased husband. Under all the circumstances of the case, the second Judge expressed himself to be of opinion that the respondents were not entitled to recover either the money lent or the landed estate; the first from their having attempted to extort illegal interest, and the second by reason of the estate being the property of the adopted son and not that of the conditional seller. At all events he thought the present claim should be dismissed, and the respondents referred to a new action to recover the amount of their loan. The papers of the case being made over to the third Judge (J. Shakespear) for his opinion, he deemed it necessary to put another question to the pandits to the following effect:—"Supposing the adoption made by the widow to have taken place subsequently to her conditional sale of her husband's estate, and supposing such conditional sale to have been the only means of preventing the foreclosure of the original mortgage, would either or both of these circumstances have the effect of legalizing the transaction"? In reply, the pandits concurred in stating that the date of the adoption could not affect the merits of the case, but they differed as to the other point; Sobharam Shastree giving it as his opinion, that the widow would be authorised in making the transfer in case of distress, which rendered it inevitable, and that this was such a case; Ramtunnoo, on the other hand, admitting the legality of the transfer in a case of inevitable distress, but contending that this was not a case of that nature, as the minor would not be answerable for his father's debts until he came of age. The third Judge, on weighing these conflicting opinions, considered the former to be entitled to the greater weight, chiefly because it coincided with the Vyavasthás delivered on former and similar occasions, and partly because it was evident that the distress in the present case was of that nature which was contemplated by law. He was of opinion, that no sufficient proof had been advanced that any deduction had been made from the loan. On the contrary he conceived the transaction to have been fair and open; that the conditional sale should be held to have become absolute on the expiration of the period specified in the written obligation of the appellant, and he was of opinion, that the decree of the Court below to that effect should be affirmed as being in every respect just and proper. By reason of this difference between the opinions of the second and third Judges, the case was postponed to another sitting for a final de-
cision. On the 24th. of June 1823, the chief and fourth Judges (W. Leycester and W. Dorin) expressed their concurrence in the view of the case taken by the third Judge. They held that no sufficient evidence had been adduced to invalidate the conditional sale, which had become absolute on the expiration of the specified period, and that the only point which remained to be determined was whether or not the transaction should be recognised as valid according to the tenets of the Hindoo law. On this question they inclined to the doctrine laid down by Sobharam Shastree, that the conditional sale, by the widow of Bishwo-nath, of her husband’s landed estate, was valid, notwithstanding the fact of his having given her permission to adopt, and of her having subsequently adopted a son in pursuance of such permission, inasmuch as both the law officers agreed in declaring that the transaction would be legal supposing a sufficient case of necessity to have been made out, and as it must be admitted that, when the period fixed for the foreclosure of the original mortgage drew nigh, there did exist a sufficient case of distress to justify recourse to the measure. The conditional sale was executed to prevent the foreclosure of the mortgage, whereby the interest of the son about to be adopted by the widow would doubtless be best consulted; and although the measure had not the effect of saving the estate ultimately from alienation, yet it put off the evil day, and steps might have been taken in the interval to avert the loss altogether. For these and other reasons, it was finally decreed that the judgment of the Court below be affirmed. Date the 24th. of June 1823.—S. D. A. Rep. Vol., III. pp. 228 to 231.

CASE NO. 467 OF 1858.

SREE-NATH ROY (PLAINTIFF) APPELLANT versus RUTUN-MALLA CHOUDHRAIN AND OTHERS (DEFENDANTS) RESPONDENTS.

II. This case was admitted to special appeal on the 28th of July 1858 under the following certificate recorded by Messrs. C. B. Trevor and H. V. Bayley.

“Gour-kishore Choudhoory was the husband of one of the defendants, Unno-poorna, and father of the plaintiff. Unno-poorna is found by the lower courts to have adopted plaintiff; indeed, it is stated in the judgment of the Judge that this was not disputed in the appeal before him.”
"Plaintiff alleges that Unno-poorma, his adoptive mother, granted to the defendant Ruttun-malla a meeras talookdaree pottah, dated 18th of Assar 1238 B. S., but that he now sued to set it aside as invalid under the Hindoo law."

"The Principal Sudder Ameen and the Judge have held that the transfer was valid under the Hindoo law. The Principal Sudder Ameen was of opinion that it had been established that the father of the plaintiff died in involved circumstances; that the alienation of a small portion of the estates of her husband by a Hindoo widow, to enable her to save from sale for arrears of the Government revenue a more valuable portion, was legal under the Hindoo law and the practice of our courts; that fraud was neither imputed nor proved; that alienation was a bonâ fide transaction for the benefit of the plaintiff; and that the consideration money had been appropriated to the purpose of paying the Government revenue, which was in arrears."

"The Judge records his opinion thus: 'Whether the alienation by the mother was for any of those purposes authorised by the Hindoo law, whether the consideration received was appropriated to the purpose of paying the revenue due to Government, and whether such transaction was bonâ fide and for the benefit of the plaintiff, are points which have received due consideration from the court.' The Judge proceeds. 'It has been ruled by the Sudder Dewanny Adawlut, that for the payment of the Government revenue, the widow of a Hindoo is authorised to alienate a portion of her husband's estate.' He then, cites the case of Gooroo-persaud Jana versus Muddun-mohun Soor dated the 11th December 1856, and Hurish-chunder versus Nund-laul Dutt, the 21st of July 1856, and states: 'I have above remarked that the purpose for which the alienation took place is one that is recognised as legitimate by Hindoo law. If the necessity can be proved or safely inferred by presumption, then the alienation must be considered a valid one and for the benefit of the plaintiff. The benefit of the plaintiff as creating the necessity is the test by which the legality of the transaction must be tried.'

"Then as to the fact of the necessity, the Judge says: 'The necessity of saving a considerable estate from the hammer justified the alienation of a smaller and less valuable one, and must be considered as an act highly beneficial to the interests of the plaintiff'"
JUDGMENT.

Mr. H. T. Raikes.—The Judge's finding is, that the loan to the widow benefited the heir, who succeeded her, by saving the estate, and that the lease is valid, as no other resources are shown to have been available.

Elberling in his Treatise on Inheritance, has collated all the authorities on this subject, and at page 73, Section CLXV., thus refers to them: "The widow is thus in her right as wife entitled to enjoy the property of her deceased husband, and as heir is bound to apply it for his spiritual benefit. Generally she cannot make gifts or sell, or mortgage the property, because, after her death, the property is to go to the next heir of her husband. When a sale or mortgage becomes necessary for any indispensable duty, religious or secular, or for her maintenance, it is valid, because duties must be performed, and she has a right to her maintenance out of the property."

Doubtless, for obvious reasons, the Hindoo law could not specifically provide for a case of Government sale; but it is not consistent with Hindoo law that the widow should passively allow the estate of her husband to be swept away, when the sacrifice of a small portion of it would preserve the greater part, and the act of sale or mortgage would apparently come within the line of secular duty imposed upon her, and render valid any such alienation independent of the precedent mismanagement which may have caused the necessity. If then the alienation be in proportion to the Government demand, and the lender be able to show that he used due caution in ascertaining the apparent truth of the representations made to him regarding the jeopardy of the estate, there seems nothing in the spirit of the Hindoo law to prevent the recognition of his rights against the successors to the property; and certainly public policy seems to require that such legitimate means of staying a sale should be available to the widow.

As to the point that the defendant was bound to show that the adverse seasons, or some inevitable calamity, had exhausted the property and brought it to the hammar, as the only legal ground on which a charge of this nature on the property can be made valid under the Hindoo law, I do not find that in the precedents quoted from any judi-
cial ruling on the point; nor do they profess to give the precise authority under the Hindoo law which inculcates this peculiar doctrine. I would rather say that no such general rule should be laid down, but that, when a mortgagee seeks to enforce his lien against property in the hands of the heir under circumstances like the present, he must prove that the representations which induced him to advance his money, disclosed such a state of facts as showed that the maintenance of the widow was dependent on the preservation of the estate, or that the performance of some duty enjoined by the Hindoo law justified the alienation.

For the above reasons I decline to interfere with the Judge's decision, and would reject this special appeal, with costs.

Messrs. A. Scone and G. Loch the other presiding Judges also affirmed the zillah decision. S. D. A. D. dated the 7th of April 1859.

**Case no. 637 of 1858.**

**Manik-malla Chowdhraim, mother and guardian of Pearee-mohun Roy-Chowdree, minor, and others (Defendants) Appellants versus Parbuttee Chowdhraim, mother of Muthoora-naauth Roy-Chowdhree, minor, (Plaintiff) Respondent.**

Plaintiff obtained a decree against a Hindoo widow his co-sharer for her share of the government revenue, which he had been compelled to pay in order to save the joint estate from sale. On proceeding to execute the decree by sale of the widow's share he found that she had exercised a right of adoption she possessed and had passed the property to her adopted son. The Judge refused to allow him to execute the decree against the minor's share, and he, therefore, brought a suit to have the minor declared liable for his mother's debt. Held, first, that the suit will lie; second, that, if the property had continued in the widow's hands, it would have been liable to sale for a debt of this description; third, that an adopted son is liable for debts contracted by the widow as proprietor of the estate, when such debts are contracted under necessity and for the benefit of the estate.—Abstract of the above case decided on the 28th. of April 1859. Vide S. D. A. D. pp. 515—521.
Case no. 292 of 1864.

Raj-kisto Roy (Defendant) Appellant versus Kishoree-mohun Mozoomdar (Plaintiff) Respondent.

Case bearing on the vyavastha No. 622.

An adopted son is not actually precluded from ever questioning acts done by his mother during his minority or before his adoption, in the same manner as any other reversioner might question such acts. Yet a sale by a widow with the consent of all legal heirs at the time existing, and ratified by decrees of courts is binding on reversioners as well as on an adopted son adopted long after the sale.—Abstract of the decision passed in the above case on the 15th May of 1865. See Sutherland's Weekly Reporter Vol. III. of 1865, pages 14 to 20.

Case No. 132 of 1857.

Banee Prosunno-moye, mother and guardian of Coowur Doorganaugh Roy, minor, (Plaintiff,) Appellant versus Ram-soonder Sein and others, (Defendants,) Respondents.

Judgment.

Case bearing on the vyavasthas Nos. 621, 622, 623, 624, 625.

Messrs. H. S. Raikes and B. J. Colvin.—In this case it is allowed that Ross-munee is to retain the management of the estate, as ‘mistress’ during her lifetime. The rights of the adopted son of appellant do not supervene until her death. It follows that Ross-munee may do, in the exercise of her authority as regards the estate, all acts but such as shall permanently affect the rights and interests of the reversionary heir. Now the acts of alienation charged against her are not necessarily acts of waste. The deeds of lease and assignment state that the money was borrowed for the purposes of the temples. This act of borrowing was quite within the competence of Ross-munee, but it is alleged that the money was not so appropriated and that the temples have been allowed to go to decay and are in want of repairs. It is to be considered if any obligation other than moral rested upon Ross-munee to preserve the temples, we are not shown that any legal obligation to preserve them was imposed upon her. There was no trusteeship constituted, the conditions of which she was bound to fulfil. She was left at full liberty in the exercise of her management, and if she chose to neglect her duties relative to the temples, she
seems to us as little liable to be challenged on behalf of the minor son as he himself would be by his heirs, were he, on acquiring the estate, similarly to neglect his duties, suppose that Ross-munee, instead of assigning away the rent, had duly collected the full amount of Rs. 825, without, however, keeping the temples up, could appellant have brought a suit against her to compel her to preserve them? We think not, for this reason, that she was under a moral obligation to preserve them, but was not legally bound to do so. Hence it appeared to us that appellant cannot have the deeds in question cancelled so long as Ross-munee lives.—The 21st of February 1859 S. D. A. D. p. 162.

Suit to cancell deeds of lease and assignment by a widow, dismissed in affirmation of the judgment of the lower Court. Held, that as the widow was left 'mistress' of the property for life, the deeds could not be questioned in her lifetime. Marginal note of the above case.

Ram-kishen Suketeyl, (Guardian of Iswar-chunder Roy, minor, adopted son of Ram-lukkhee Debya, deceased,) appellant, versus Musummat Sree-motee Debya, and others, respondents.

Cases bearing on the Vya-vantha No. 629,

I. This was an action brought by Musummat Ram-lukkhee Debya, against the present respondent and others, to obtain possession of a one anna, three gunda, one cowree, one krant share of a three and half anna share in the Zemindary of Kishen-ram Roy Choudhery, of a five anna, six gunda, two cowree share of a talook known by the name of the said Kishen-ram Roy, and of a five anna, six and half gunda share in a talook known by the name of Nursingdeb Roy.

The plaint set forth that the above lands had been the property of the plaintiff's father-in-law Kalika-prosaud, who died in the month of Pous 1223, B. S., and of whom she and a son adopted by her were the heirs; that however on the occurrence of the aforesaid death, the defendant Sree-motee Debya, daughter of her father-in-law, with Cally prosaud Gangooly her husband, had conspired with the other defendants, and taken possession of the estate; that, therefore she sued in her capacity of guardian of her son who was the rightful proprietor.
Cally-prosaud Gangooly, one of the defendants, stated that the deceased Kalika-prosaud had given his daughter in marriage to him, and, having no son living, had made over to him, the defendant, by a deed of gift, all the lands included in the present plaint, with some others situated in the pergunnah of Shayusta-nugur and a talook known by the name of Kishen-ram Roy, in the pergunnah of Arung-pore, reserving only two mouzahs for his own maintenance, and one for that of the plaintiff, his deceased son’s wife; that his father-in-law had, at the same time, executed an engagement promising that, on his death, the two mouzahs, which he had set aside for his own support, should belong to his daughter Sree-motee; that he, the defendant, had obtained possession through the aforesaid deed during Kalika-prosaud’s life time, and had paid the jumma ever since. He further stated that the husband of the plaintiff had died without giving powers to his wife to adopt a son; and that, therefore, the adoption on which the plaintiff rested her plea must be held altogether illegal.

The plaintiff, dissatisfied with the Zillah Court’s decision, appealed to the Provincial Court of Dacca; and Cally-prosaud dying, his widow Sree-motee, proving herself to be his heir, maintained the suit.

The first Judge of the Court, agreeing in the opinion of the third Judge, gave judgment to the effect that the dismissal of the appellant’s claim should be affirmed, but the declaration as to the illegality of the adoption of Iswur-chunder should not be maintained.

The appellant’s plea of special appeal was admitted in the Sudder-Dewanney Adawlut.

The following interrogatories were put to the court pundit, and answers received from him.

Question 1st.—A Hindoo inhabitant of Bengal died, leaving a daughter, whose husband is alive, an adopted son of his son who died before him; and some years after his death his daughter brought forth a male child. In this case, according to the law, as current in Bengal, will his inheritance devolve on the adopted son of his son, or on his daughter’s son? if on both, what are their respective shares?

Question 2nd.—A Hindoo widow, having obtained her husband’s sanction to adopt a son, does so ten years after his death. Is the adoption which took place after so long a period from her husband’s death
good and legal, and is such adopted son entitled to inherit from his adopting mother’s father-in-law or otherwise?

*Question* 3rd.—The grandfather, by whose direction and consent the widow had adopted the son, after such adoption, having been displeased with his son’s widow, made out a deed of gift in favor of his son-in-law, and put him (the donee) into possession of his entire landed property, of both descriptions, ancestral and self-acquired. Is the deed of gift valid in such case, and is it an impediment to the adopted son’s right of succession to the property?

*Question* 4th.—Should the grandfather have executed the deed of gift in favor of his son-in-law previously to the adoption, in this case will his property devolve on the adopted son or not?

*Question* 5th.—If the donor executed the deed of gift either in 1221 or 1222 B. S., and antedated it to 1218 B. S., by the collusion of his son-in-law, in this case, will the deed of gift be held null and void by reason of such false entry, or will it be considered good and legal notwithstanding?

*Reply* 1st.—If a Hindoo of Bengal die, leaving a daughter who is likely to have male issue, and an adopted son of his son, the son dying before his father, and a few years after that the daughter bear a son, in this case the adopted son is entitled to the succession, even though the daughter and her son are living. However, a discrepancy exists in this point between the text of *Devala*, quoted in the *Dāya-bhāga*, and that of *Manu*, who held the first rank among legislators. This opinion is delivered agreeably to the doctrine of *Manu*.

*Reply* 2nd.—A Hindoo widow, having obtained her husband’s sanction, may adopt a son after ten years from the date of her husband’s death, and the adoption is legal. Such adopted son is entitled to inherit from his adopting father’s father; for there is no fixed period for adopting a child on the expiration of which the adoption can be held void.

*Reply* 3rd.—Should the widow of the son, with the consent of her late husband and his father, have adopted a son, and subsequently should the father, being displeased with his son’s widow, have given his property movable and immovable to his son-in-law, the gift must be considered illegal, and the son-in-law can derive no right thereby to the property given.
Authorities:—"What has been given by men agitated with fear, anger, lust, grief, or the pain of an incurable disease, &c., must be considered as ungiven." The passage of Nārada cited in the Vīvasīdārvanavasūtu.

Reply 4th.—Though the grandfather, previously to the adoption, have executed a deed of gift assigning his property to his son-in-law, yet the adopted son had acquired a prior title to the property, the boy ultimately adopted being entitled to all the rights of a posthumous son.

Authorities.—"Even they who are born, and (yet) unborn, and they who exist in the womb, require funds for subsistence; the deprivation of the means for subsistence is reprehended." The text of Manu quoted in the Dāya-bhāga.

Reply 5th.—Should the donor in 1221 or 1222 B. S., have executed a deed of gift in favour of his son-in-law, and have antedated it to the year 1218 B. S. to defraud his son’s adopted son, in this case the deed of gift must be held null and void, by reason of its containing a false entry. This Vyavasthā is in conformity to Manu, the Dāya-bhāga, and other legal authorities as current in Bengal.

After perusing the opinion, the Second Judge recorded his judgment to the following effect—that it has been established that the adoption of the boy Ishwur-chunder had taken place in the month of Aghan 1221 B. S., two months before the filing of the amended defence, the mention of a deed of gift in which, for the first time, could in consequence, only be looked on as an expedient of the writer to deprive the adopted boy of his rights, and satisfy his son-in-law, who wished to retain the inheritance for the son of whose birth he was not then without hope; that it had been moreover established that the adoption of Ishwur-chunder had been made with authority from the husband previously received, and with the consent of the father-in-law; that a delay of ten years before such authority was acted on was not illegal, as had been proved by the answer (No 2) of the Court puṇḍit; and this was further supported by the fact, that the opinion of the puṇḍit of the Provincial Court, given in ignorance of the existence of the deed of gift, was exactly to the same effect; that although another opinion of that puṇḍit, given on the supposition of the deed of gift having been made out previous to the adoption,
declared that deed to confer a superior right, yet the opinion in question could not be held applicable in the present case, when the allegation of the priority of the date of the deed of gift had been shown to be a mere fraudulent circumvention.

The whole estate was therefore adjudged to belong to the adopted son, subject to the necessary condition of providing for the maintenance of Sree-motee.

The case was next brought before the fifth Judge W. B. Martin) on the 15th of June, who expressed his entire concurrence in the above opinion.


GOUR-BULLUB, complainant, versus JUGGERNOOT-PROMAUD MITTER and others, defendants.

II. The principal question raised in this case was, whether or not Gour-bullub had a right to the estate of (the person who was called in the arguments, his adopting grandfather. The person so called (whether properly or otherwise) was Rajah Raj-bullub. He had an only child, a son, called Moocund-bullub. Moocund-bullub married Joy-mony Dosey by whom he had no child. Before his death he had desired Joy-mony to adopt a son. Moocund-bullub died three years before his father Rajah Raj-bullub, and a short time after he had desired his wife Joy-monee to adopt a son. She did not adopt until after the death of Rajah Raj-bullub, her husband’s father. It was said, and found in an issue, that Rajah Raj-bullub, having heard of the instructions given by Moocund-bullub to Joy-monee to adopt a son, acquiesced in those instructions. On the 24th of March 1824, Gour-bullub (who had been adopted by Joy-monee, in pursuance of instructions given to her for that purpose by her husband (Moocund-bullub) was entitled to the estate of Moocund-bullub, and also to the estate of Rajah Raj-bullub.

The defendants were nephews (i. e. sons of the sister) of Rajah Raj-bullub, who died possessed of very large property. They were the heirs of Rajah Raj-bullub and would have been entitled to his estate had Gour-bullub not been adopted.

Raj-bullub (the father of Moocund-bullub) survived his son about three years and died in the Bengal year 1205, He did not leave either
widow or child surviving him. Joy-monee, after the death of Raj-bullub adopted the complainant Gour-bullub, in pursuance of the instructions which she had received from her husband, Moocund-bullub, in his life time.

In the course of the proceedings, as some importance seemed to have been attached to the fact of Raj-bullub having confirmed the instructions which had been given by Moocund-bullub to Joy-monee relative to the adoption, and as one issue was to try whether Gour-bullub had been adopted as Moocund-bullub's son, I enquired of the Court pundits if it was necessary that, at the time when Gour-bullub was adopted, it should have been declared, at whose instance the adoption took place—or that he was adopted by the desire of Raj-bullub or of Moocund-bullub, or of both? The pundits answered, that it was perfectly unnecessary, because nothing but the desire of her own husband could sanction the adoption of a son by Joy-monee; that without the sanction the adoption would have been utterly void; and that with it, the declaration would be superfluous, inasmuch as the boy must necessarily be adopted as the son of the adopting widow's late husband, and that it could not possibly be otherwise.

Three issues, in which the complainant Gour-bullub was ordered to be plaintiff, where directed to be tried.

1st. Whether Joy-monee (the widow of Moocund-bullub) had authority from Moocund-bullub to adopt a son?

2nd. Whether Joy-monee (the widow of Moocund-bullub) did adopt Gour-bullub as the son of Moocund-bullub?

3rd. Whether Raj-bullub (the father of Moocund-bullub) did authorise, and assent to, the adoption of a son by Joy-monee?

All these issues were found in the affirmative, or in favour of the plaintiff Gour-bullub.

The question of Hindoo law then arose, viz. whether Gour-bullub, having been so adopted, became, by his adoption, entitled to the estate of Raj-bullub, his adopting grandfather—for it was admitted that he did, by his adoption, become entitled to the estate of Moocund-bullub, his adopting father.

Upon this point, the two pundits of the Supreme Court differed in opinion—one holding that Gour-bullub was entitled to the estate of
Moocund-bullub only, the other holding that he was entitled to the estate of Moocund-bullub, and the estate of Raj-bullub also. The Pundit who confused the right of Gour-bullub to the estate of Moocund-bullub, delivered to me a paper (of which the following is a copy) in justification of his opinion.

"Sankha and Likhita, Harita, Jagnavalkya, Vishnu, Narade and Devala are the seven sages that have ordained that a given son, that is an adopted son, is not an heir to kinsmen but that he is such only to his adopting father; and Manu, Goutama, and Boudhavana, are the three sages that have declared that he is heir to his adopting father as well as to his father's kinsmen. In order to reconcile these contending passages, the authors and compilers of law treatises have advanced, that, where such texts occur, they intend an adopted son of transcendent merits, and as such a meritorious son cannot be found in the present (Kali) age, the author of the Dhyā-bhāga has placed him among those who do not inherit of kinsmen.

Hence there is no disagreement between Manu and Jimita-vahana, the author of that treatise, who, in the beginning of it, says that he has composed the work for the information of such as lose themselves in contention, from not understanding the texts of Manu and other sages, and thereby makes appear the superiority of Manu, and the utility of his own work in explaining the intent and meaning of Manu. Decisions are not formed solely by the text of Manu, because without the assistance of commentators his true meaning is not evident; otherwise why a sixth portion or a fifth portion of the share of a lawfully begotten son, awarded to a given son, is not held legal, but only a one-third share ordained for him by Devala and other sages?

It will here be observed that this Pundit has, as many Pundits before him have, relied upon the efficacy of transcendent merits, for the purpose of reconciling all differences of opinion; but as he himself has informed us, that these 'transcendent merits' are not to be found in the present (Kali) age, he has started another topic for controversy. If, as is acknowledged, transcendent merit cannot exist in the (Kali) age, it is not easy to conceive how it can at this day either create differences, or reconcile them. At all events, if transcendent merit be necessary to the inheritance of an adopted son, and if transcendent merit is now 'not to be found,' it must follow that the adopted
son's right to inherit, is, at this day, absolutely abolished. To this conclusion, such a mode as that which our Pundit has had recourse to, for the purpose of reconciling differences, must obviously lead; and a denial of those rights, which are admitted by every day's practice to exist, and which the Pundits themselves (except in special instances) never fail to acknowledge, must be the consequence.

As the Supreme Court pundits had differed in opinion, and as the case was of much importance on account of the magnitude of the estate contended for, and on account of the precedent which it was to form, I determined to get the best opinions which were to be obtained. It was submitted to the pundits of the Sudder Dewanny Adawlut, put as the case of A, B, and C, and the adopted son. They both declared that a son adopted by C, the widow of B, was, according to the statement, entitled not only to the estate of B but to the estate of A, the father of B.

After this, Mr. William Hay Macnaghten, at my desire, translated the case and circulated it for the opinions of the pundits attached to the Courts in the Mofussil.—They are all printed in the appendix.—In the statement which was sent to the pundits of these Courts, the name Ram-krishna was substituted for Gour-bullub; the name Ram-hurry for Raj-bullub; the name Ram-tunnoo for Moocund-bullub; and the name Hurry-ryah for Joy-monee.

The defendants moved for a new trial of the issue; and a new trial was granted, the defendants taking the order upon the terms of paying within a certain time, the costs of the formal trial to the plaintiff. These terms were not complied with, and the cause was set down for further directions. On the 14th of March 1824, it came on to be heard. The defendants did not appear; and the complainant Gour-bullub was declared entitled to the estates of Moocund-bullub and of Rajah Raj-bullub, and the defendants decreed to account with him accordingly.

No doubt existed with respect to the right of Gour-bullub; nor was there any reason to suppose that a second trial could have produced a result different from the first.—Cons. H. L. pp, 151—166.

Remark.—The above case was translated and circulated to the civil Courts of 45 Zillahs, and to the provincial Courts of Benares,
Bareilly, Calcutta, Moorsheadbad, Patna, and Dacca; and the Pundits of those Courts wrote and delivered 51 Vyavasthás or law opinions. Only in five of those opinions the adopted son, whose name was mentioned to be Ram-krishna instead of Gour-bullub, was declared not to have a right to inherit the estate of his adopting grandfather, but only to the estate of his adopting father.*—And in one of these five Vyavasthás the reconciliation and doctrine of the Dattaka-chandrikā, (vide post. p. 955,) were adhered to, and, on the ground of the dattaka son in the present (Kali) age not being endowed with transcendent qualities, the dattaka son Gour-bullub was declared not entitled to the estate of a bandhu. In the four other Vyavasthás, the doctrine of Devala and the rest, as quoted in the Dāga-bhāga and other works, being followed, the adopted son was declared entitled only to his adoptive father’s estate,* and not to that of his adoptive grandfather and the rest.—In all the remaining 46 Vyavasthás the adopted son was declared entitled also to the estate of his adoptive grandfather; and all of these Vyavasthá were founded principally on the text of Manu, and in some the commentary of Kullāka Bhatta was respectfully quoted for authority (Vide Cons. H. L. Appendix pp. XVIII—LVII.) The Court, according to the latter doctrine, passed a decree recognising the adopted son’s heritable right to the estate of his adopting grandfather; and the decision is quite consistent with the law and usage of the present age.—Vide supra, pp. 956—958.

**Whether a dattaka son is entitled to inherit from a bandhu?**

There are texts which declare that a dattaka son is entitled to inherit from bandhus (cognates and agnates), there are also texts which deny his heritable right to such estate. They are as follows:

* In the above doctrine as well as in the texts cited in the Dāga-bhāga, the dattaka son being declared entitled to the estate of his adoptive father only, it does not follow that he is not entitled to the estate of his paternal grandfather. On the contrary, the legal signification of the term ‘son’ being the male issue as far as the great-grandson, (See ante, p. 23,) it seems to be consistent with the law that the adopted son, being entitled to the estate of his adopting father, is also entitled to the estate of his adoptive grandfather; and consequently, the declaration,—that the dattaka son is entitled to the estate of his adoptive father, and not to that of his adoptive grandfather, —does not appear to be quite proper, consistently with above doctrine and texts; but it would have been so, had it been declared that the male issue, signified by the term son, are entitled to the estate of a deceased proprietor,
"Of the twelve sons of men, whom MANU, sprung from the Self-Existence, has named, six are kinsmen and heirs; six not heirs, but kinsmen.—The son begotten by a man himself, the son of the wife, the son given, the son made, a son of concealed birth, and a son rejected, are the kinsmen and heirs.—The son of an unmarried daughter, the son of a pregnant bride, the son bought, the son of a twice married woman, the son self-given, and the son by a Shádrá, are the six kinsmen, but not heirs."—MANU. See D. Ch. Sect. V. § 11.

BOUDHÁYANA.—He pronounces the real legitimate son, the son of an appointed daughter, the wife's son, the sons given and made, the son of concealed origin, and the deserted son also, participators in the estate,—the son of an unmarried daughter, the son received with a pregnant bride, the son bought, the son of a twice married woman, also the son self-given, and the Nisháda, or son of a Shádrá, he pronounces partakers of the family.—D. Ch. Sect. V. § 12.

The son begotten by a man himself in lawful wedlock, the son of the wife begotten by an appointed kinsman, a son given, a son made by adoption, a son of concealed birth, and one rejected by his natural parents, are sons who inherit property.—The son of an unmarried girl, the son of a pregnant bride, a son by a twice married woman, the son of an appointed daughter, a son self-given, and a son bought, claim the family of their adoptive fathers, and a fourth part* of the paternal estate, if there be no son begotten in lawful wedlock, nor other superior claimant.—GOUTAMA. See Coleb. Dig. Vol. III. p. 150.

The son begotten by a man himself in lawful wedlock, the son begotten on his wife by a kinsman, a son given by his natural parents, a son made by adoption, a son of concealed birth, and a son rejected, take shares of the heritage.—The son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice married woman, a son self-given, and a son by a Shádrá, are six sons who are contemptible as dust.—KÁLIKÁ-puráña. See Coleb. Dig. Vol. III. p. 156.

"Sons are pronounced, by intelligent saints, to be twelve: of these, six are kinsmen, and heirs; and six kinsmen. Those versed in the distinctions of class, declare, that the first, is the one begotten by the man himself; the second, the son of the wife; the third, the son of

---

* See the Notes at pages 909, 910.
the appointed daughter; the fourth, the son of the twice married woman; the son of the unmarried daughter, is considered the fifth; and the (sixth,) the son secretly born in the man's house. These six present funeral oblations.—The son deserted, and the one received with a pregnant bride, the son given, and the son made, and fifthly, the son purchased, and the son presented by himself; these six, whose filial relation proceeds from an overt act of acceptance, are kinsmen, but not heirs. Yama.—D. Ch. Sect. V. § 3.

The real legitimate son; the son of the wife, by appointment; the son of an appointed daughter; the son of an unmarried daughter; the son received with a pregnant bride; the son of hidden origin; the son of a twice married woman; the deserted son; the son given; the son purchased; the son made also; and the one given by himself; these are declared to be the twelve descriptions of sons. Of these, six are heirs to kinsmen, and six not heirs to kinsmen.—Each, according to priority in order, is considered as superior; and the last successively as inferior. On the death of the father, according to their order, they succeed to his estate. On defect of each preceding more worthy, let the next less worthy son obtain the estate.”—Nārada D. Ch. Sect. V. § 4.

“A son rejected by his father or mother, the son of a pregnant bride, a son given by his natural parents, a son bought, a son by a Shudra, and a son self-given; these six sons are not heirs to collaterals, nor to their own father jointly with other sons.—There is an alternative in respect of partition among those who are heirs; the son begotten in lawful wedlock, the son of a wife begotten by a kinsman, the son of an appointed daughter, the son by a woman twice married, the son of a young woman unmarried, and a son of concealed birth, are six kinsmen and heirs, who belong to the same race with their fathers and paternal grandfathers, who jointly inherit the estate, and offer funeral cakes, and who claim affinity with Sepindas.—Sāṅkha and Līkhitā. See. Coleb. Dig. Vol. III. pp. 151. 152.

“The son begotten by the man himself, the son of the wife, the son of the twice married woman, the son of the appointed daughter, and the son of hidden origin, are kinsmen and heirs.—The son given, and the son purchased, the son deserted, the son received with a pregnant
VYAVASTHÁ-DARPANA.

bride, the son self-given, and the son any how obtained, are heirs, but not kinsmen.”—HÁRAFTA. D. Ch. Sect. V. § 10. See Coleb. Dig. Vol. III. p. 152.

DEVALA, having recited the real legitimate son, the son of an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the deserted son, the son received with a pregnant bride, the son of a twice married woman, the son given, the son self-given, the son made, the son purchased, adds: “These twelve are pronounced sons, for the sake of issue: some are sprung from himself; some from another also; some acquired by (an overt act of adoption: ) and others filially related independent thereof. Of these, the first six are kinsmen and heirs (to collaterals,) the rest are so merely to the father.—Fide D. Ch. Sect. V. § 15.

In the text of MANU, BoudháYANA, and Káliká-purána, cited, the dattaka son is declared to be a kinsman as well as an heir; whereas in the texts of YAMA and the rest he is declared only to be a kinsman. Although it may appear on a cursory view that the purport of the texts of YAMA and the rest is contradictory to that of MANU, (and, as such, they are not to be respected, for it is said by VRIMASPATI that—‘MANU held the first rank among legislators, because he had expressed in his code the whole sense of the Veda ; that no code was approved, which contradicted MANU,’) yet such is not really the case, and the apprehension of such seeming contradiction too has been reconciled by the Digest writers.—The reconciliation, however, has been made in two ways.

Reconciliation. I. One of which is,—that the author of the Dattaka-chandriká decided that the dattaka son is entitled or not entitled to inherit from a bandhu according as he is endued or not endued with good qualities, thus: ‘The doctrine of one holy saint, that the son given is an heir to kinsmen,—and that of another that he is not such heir,—are to be reconciled by referring to the distinction of being endued with good qualities, or otherwise. By reason of succeeding to the estate of sapinda kinsmen, as well as to that of the father, he is (argued by the one to be) heir to kinsmen: and on account of the particle 'only' in the phrase 'of the father only,' (occurring, in the passage subjoined,) from inheriting merely of the father, he is (argued by the other, not to be) such heir. ‘Of these, the first six are heirs to kinsmen: the other six of the father only.’ And
thus (the objection of) variation, from the son given being enumerated higher and lower in the order of inheritance, and so forth, by different holy saints respectively, is obviated, by the distinction as to his qualities, good and bad."—D. Ch. Sect. V. § 22, 23.

Remark. According to the above doctrine, a dattaka son not endowed with good qualities is entitled to inherit only from his father, and not from a bandhu.

The doctrine of Jimita-váhana also is almost the same, inasmuch as, considering that a dattaka son endowed with good qualities is rare in the present (kalás) age, he, after quoting the text of Devala, has laid down that the dattaka and the rest of the sons inherit only from their father: thus: 'The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsmen; that is, of sapindas and other relations. The others are successors of their (adoptive) father, but not heirs of collateral relations (sapindas, &c.').—See Coleb. Dá. bhá. p. 155.

The author of the Viváda-bangárñava says also the same thing, viz. 'A question here occurs for discussion: can a son given be heir to a kinsman, or not? On this point some lawyers affirm, that the right of the son given to inherit from a kinsman, which is mentioned by Manu and Boukháyana, and his superior rank, as declared by Goutama, Vrihaspati, and Káliká-púróna, must be considered as relating to a son given, who is endowed with transcendent good qualities; for the expressions used in the text of Vrihaspati, 'pure by class, and irreproachable by their conduct,' denote transcendent qualities: pure signifies 'absolved from all guilt;'-by acts of religion, by alms, by study of scripture, and by sacrifices, men become pure, or are absolved from all guilt. A text of Manu (viz. 'Of the man to whom a son has been given, adorned with every quality,* that son shall take the heritage, though brought from a different family') shows that a son given being endowed with every virtue, shall take the heritage.—Coleb. Dig. Vol. III. p. 270.

II. The other reconciliation has been made by Kutila Bhatta, in his commentary on the texts of Manu, already cited, thus: "Among the twelve sons, who are spoken of by Manu, the son of Brahmá, the first six are kinsmen and heirs to the relations of the same race (gotra); conse-

---

* "With every quality"—class, science, and observance of duties.—D. Ch. Sect. V. § 20.
quently, as kinsmen, they offer oblation-cakes, water, and so forth to
*sapindas,* and *samánodakas,* and, in default of the nearer (heir,) they
succeed to the heritage of the relations of the same race,(*gotra*)—for it
will be declared that the twelve descriptions of sons, without any excep-
tion, inherit the estate of their father. The last six do not take the
heritage of their relations of the same race but become kinsmen, and
as such they perform the duties of kinsmen, that is, offer the libation
of water and so forth.†.—Commentary on *Manu,* Ch. IX. V. 158.

*Vigyáneśvara* has laid down almost the same doctrine. Thus:
"*Manu,* having premised two sets of six sons, declares the first six to
be heirs and kinsmen; and the last to be not heirs, but kinsmen:
'The true legitimate issue, the son of a wife, a son given, and one
made by adoption, a son of concealed origin, and one rejected (by his
parents,) are the six heirs and kinsmen. The son of an unmarried
woman, the son of a pregnant bride, a son bought, a son by a twice
married woman, a son self-given, and a son by a *shádri* woman, are
six not heirs but kinsmen.'—That must be expounded as signifying that
the first six may take the heritage of their father's collateral kinsmen
(*sapindas* and *samánodakas*;) if there be no nearer heir, but not so
the last six.—*Mitákśharma,* Ch. I. Sect. 11. § 30, 31, p. 317.

Respected and adopted by many authors, this reconciliation is the
prevalent one, as being applicable to the present age: the other, made
as it is by distinction of the *dātaka* son's being endued or not endued
with qualities, is at present quite useless, a *dātaka* son endued with
good qualities being rare in the *Kali* age. Consequently,—

* See ante, pp. 303—307. † See ante, p. 657.

† The above commentary is quoted from the Institutes of *Manu,* published under the
authority of the Committee of Public Instruction.—Although the reading of the com-
mentary on the above text of *Manu* as quoted in the *Vividha-bhågavatam,* and trans-
lated by Mr. Colebrooke, is somewhat different from that of the commentary in question,
yet both are of the same purport and result.—The reading of the latter commentary is
as follows: "*Manu,* sprung from the self-existent *Brahma,* and first of the fourteen
*Manus:* among those twelve sons of men whom he has named, the first six are pro-
nounced as kinsmen and heirs to collaterals: the result is, that, as kinsmen, they offer
the funeral cakes and water to *sapindas* and *samánodakas:* as heirs, they succeed to the
heritage of their collateral relations on failure of male issue, as well as to the estate of
their own father. The last six may not take the heritage of any except their own father;
but they participate in his wealth, for it is declared generally without any exception, that
sons inherit the estate of their father."—Coleb. Dig. Vol. III. p. 146.
633. The dattaka or given son is entitled to inherit from a relation of the same gotra * or in direct male line, but not from a congnate or relation of a different gotra.*

Additional Authority.

The commentator on the Dattaka-chandrikā has, in his Synopsis, exclusively adopted the above mentioned doctrine of Kullaka Bhatta. Thus: "As a dattaka son is entitled to inherit from his (adoptive) father, so is he entitled to the property of his maternal grandfather and the other bandhus or cognates: this is according to the doctrine of the Dattaka-chandrikā.† But (although) many of the sages have included the dattaka son amongst the last six sons, yet Manu, who held the first rank amongst legislators, having included him among the first six, the compilers of the Digests have come to this decision that a dattaka son is entitled to inherit from those bandhus who belong to the gotra or race to which his adoptive father belonged, he shall not be entitled to the property of the bandhus of a different race, (such as) the maternal grandfather and the rest. This decision has reconciled all the texts and received corroboration by the Courts of justice. Those legislators who declared the dattaka son not entitled to the property of bandhus, must have meant the bandhus of a different gotra or race, that is, the maternal grandfather and the like. And the other legislators, who recognised the dattaka son to be entitled to the property of bandhus, must have meant them to be such bandhus, as are of the same gotra, (viz.) the paternal grandfather, brother, and the rest. For authority hereof, see Manu (Sanskrit,) page 14, verse 158."‡

* See the second at page 657.
† By a dattaka son, entitled to inherit from a bandhu, is, however, meant, in the Dattaka-chandrikā, that son who may be endued with good qualities; inasmuch as the commentator for his authority refers to line 20, page 30 of the Sanscrit Dattaka-chandrikā, published by himself, but this line, (the translation whereof—Therefore, by the same relationship of brother, and so forth, in virtue of which the real legitimate son should succeed to the estate of a brother or other kinsmen, where such son may not exist, the adopted son takes the whole estate even)—is the consequential clause of the lines 18 and 19 just above it, wherein the title and non-title of a dattaka son is recognised, in accordance with his being endued with good or bad qualities. See D. Ch. Sect, V. § 22,23, and ante, p. 1090.
‡ By this be alludes to the interpretation, reconciliation, and determination by Kullaka-Bhatta already noticed.
Sir William Macnaghten lays down the same, by saying: "Another point, which has been the subject of much discussion is, as to whether an adopted son by the dattaka form succeeds collaterally as well as lineally; but this may now be fairly said to be set at rest, and decided in the affirmative. It is true that Jimita-vahana in the Daya-bhoga, has contended that the son adopted in the dattaka form cannot succeed to the property of his adopting father’s relations; but the doctrine, being in opposition to the text of Manu, cannot be held entitled to any weight. It should be observed, however, that a son so adopted has no legal claim to the property of a bandhu or cognate relation: for instance, if a woman, on whom her father’s estate had devolved, adopt a son with the permission of her husband, the son so adopted will not be entitled to such estate, on his adopting mother’s death. It will go to her father’s brother’s son, in default of nearer heirs. This point was determined in a case recently decided by the Court of Sudder Dewanny Adawlut.* It is not quite evident why a daughter’s adopted son should be excluded from inheriting the estate of his adopting mother’s father, while a son’s adopted son’s right of succeeding collaterally has been acknowledged, inasmuch as the maternal grandfather is enumerated among the kindred by all the Hindu legislators; but the reason is, that the party adopted in the latter case becomes the son of a person whose lineage is distinct from that of the maternal grandfather.—Macn. H. L. Vol. I. p. 78.

The reason assigned by Sir W. Macnaghten is not the only one, but there are many reasons for an adopted son’s not having legal claims to inherit from the adoptive mother’s father; some of which are as follows:—

1. ‘By a man destitute of a son only, must a substitute for the same always be adopted: with one resource, for the sake of the funeral cake, water, and solemn rites.’ (Atri.)—“By a man destitute of a son.”] From the masculine gender being here used, it follows that a woman is incompetent (to adopt.) Accordingly Vashishtha ordains: “let not a woman either give or receive a son in adoption, unless with the assent of her husband.”—D. Mím. Sect. I. § 15.

2. “Nor let a woman accept a son (without the assent of her husband.”)—If a son be accepted by a wife without the assent of her husband, her property in that child is valid, but not his performance of

---

filial duties: he can neither possess the heritage, nor offer the shrāddha or the like; for it is shown that the adoption of a son is the act of the man; in no code of law is it found that adoption can be the act of the woman.—Coleb. Dig. Vol. III. p. 244.

3. It should not be argued, that one who has no wife, being consequently excluded from the order of the householder, cannot properly adopt a son, this being an act mentioned when treating of the order of a housekeeper or married man. There is no argument to support such an induction. And it is recorded, that Vyāsa and others, who had contracted no marriages, nevertheless obtained sons, namely Suka-deva and others. He who happens to have no wife, (whether he have contracted no marriage, or his wife have died, or have been forsaken by him,) either has not completed the ceremonies or belongs to no order; but it is contrary to common sense that, although the form of adopting a son given have been observed, the adoption should be void.—Coleb. Dig. Vol. III. pp. 252, 253.

5. Males only need sons to relieve them from the debt due to ancestors.—Ibid. p. 253.

6. And it is recorded in the Mahā-bhārata and other works, that Jaratkāra, Rishi, and other males, have taken wives for the sake of obtaining male issue, but it is no where said that a woman has taken a husband for that purpose.—Ibid. p. 53.

7. Accordingly, in the double set of oblations, it is indispensably necessary that the son should perform the shrāddha for the paternal line not for the line of his maternal grandfather: but it is simply reprehensible in one who performs the shrāddha for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors. Consequently, since the shrāddha may be performed without noticing the maternal grandfather's line in a subordinate double set of oblations, and the like, the shrāddha for the maternal ancestors is not requisite to the completion of the obsequies performed in the dark fortnight of Asvina. This observation of Raghu-nandana and others is accurate.—Ibid. p. 253.

8. The better reason, therefore, perhaps is that the necessity of a son to celebrate the funeral rites regards the man, rather than the woman, who depends less for redemption upon such means, so that whenever a woman, duly authorised, adopts, it is on her husband's account, and for his sake, not her own.—Str. H. L. Vol. I. p. 67.
Legal opinion delivered in, and admitted by, the Sudder Dewanny
Adawlut, and approved of by Sir William
maclaghten.

Q. A person named Sheo-nauth, an inhabitant of Bengal and proprietor of half an ancestral landed estate, died in the year 1204 B. S., leaving a pregnant widow by name Bhugo-vutty, and an uterine brother named Gobind-prosaud; in the same year his widow brought forth a daughter, who was named Gunga-myā. The widow died in 1207 B. S., Gunga-myā, in the year 1217 B. S., was married to a person called Ram-keshob Dutt. Gobind-prosaud, the original proprietor's brother, died in the year 1218 B. S., leaving Kishen-kishore a son, and Doya-myee a daughter. In the year 1226 B. S., Ram-keshob Dutt, the husband of Gunga-myā, died childless. Whether, on the death of the original proprietor, was his widow Bhugo-vutty, or his brother Gobind-prosaud, entitled to inherit his estate? If the widow was the proper heir, whether was Gobind-prosaud or her daughter Gunga-myā entitled to inherit the estate on her death? If the daughter was the proper heir, and if she by consent of her husband adopted a son, was such adopted son entitled to inherit the estate on her death; and if he was not, who was the proper heir on whom the estate should devolve after the death of Gunga-myā?

R. On the death of Sheo-nauth, his property belonged, of right, to his widow Bhugo-vutty, and not to his brother Gobind-prosaud; for the estate of him who dies leaving no other heir down to a great grandson, devolves by the law of inheritance on his widow. On the death of Bhugo-vutty, the estate which she had inherited from her husband should devolve on her daughter, who was unmarried at the time of her husband's death, and not on the brother of Sheo-nauth; for, by the law of inheritance, of the three descriptions of daughters, that is, the unmarried daughter, she whose husband is living, and of whom there is probability of a son being born, and the daughter who has borne a son, the first mentioned has the best title to the succession, in default of other preferable heirs; but the son adopted by Gunga-myā, by the consent of her husband, has no title to the estate to which she had succeeded, because, according to the Dēya-bhāga, an adopted son has no legal claim to the pro-

121
property of a bandhu or cognate; and according to the interpretation of the text of Manu, which admits adopted sons to the right of succession collaterally, the meaning is, succession to the property of persons belonging to the same family as the adopting father, as fully appears from the Manvartha Mukthavali, compiled by Kullaka Bhatta, and other authorities. On the death of Gunga-mya, therefore, the estate left by her father, to which she had succeeded on the death of her mother, and her right to which was limited to a life-interest, should devolve on Kishen-kishore, the brother’s son of her husband, because when an estate devolves on a childless widow, who is held to be half the body of her husband, it reverts at her death to the heirs of her husband. So an estate which had devolved on a daughter, who has a weaker claim, should, a fortiori, revert to the heirs of her father.

Authority:—The text of Jâgyavalkya, cited in the Dáya-bhâga and other law tracts: “The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates,” &c. (Dáya-bhâga, p. 160.)


Remark. The Vyavasthâ or law opinion contained at pages 87—89 of the above work of Macnaghten’s (see ante, p. 9017) is directly opposed to the Vyavasthâ quoted above; and though both of them are approved of by him as correct and valid, yet only one of those two Vyavasthâs can be so held. It is therefore necessary to ascertain which of them is to be preferred as being the just one. Although in the former of the two Vyavasthâs in question, the adopted son of a sister is declared entitled to a seventh, as co-heir with three sons of another sister, yet it appears, from the manner of writing the Vyavasthâ, that it was given agreeably to the object of the question, which was: “to what proportion of the estate will each individual survivor be entitled?” and the law officer’s answer was restricted to that alone. Had the question been, ‘whether a sister’s adopted son is entitled to inherit from a maternal uncle?’ the answer had doubtless been a different one. The learned compiler, moreover, having, in his note thereon, declared the pundit’s proportion of the
shares to be accurate, has at the same time, admitted that there is no express authority for the succession of the adopted son of a sister. But nevertheless he has added: ‘but his right is admitted by inference.’ It seems that, at the time of writing the note, he himself must have drawn the inference without consulting the paramount authorities on the law; for, none of them has drawn such an inference as the above. In fact, it appears to be contrary to their doctrine on the point in question. For instance, the author of the Mātāksharā in his exposition of the text of Mānu, already cited, having taken the word ‘bandhu’ to mean sapindas and samānīndakas, has held the dattaka son entitled to their property;* the author of the Dīya-bhāga has at once denied his title to inherit from a bandhu;* the author of the Dattaka-chandrikā having recognised such dattaka alone as may be endued with good qualities entitled to inherit from a bandhu, and a dattaka endued with the required qualities not being found at the present (kali) age, the effect of his opinion is that a dattaka at the present age is not entitled from a bandhu.* Jagan-nātha may be said to have followed the above doctrine. Kālikā-Bhatta, in his commentary upon the above text of Mānu, has determined that the dattaka son is entitled to inherit from a bandhu of the same family as his adoptive father. The other authors have said nothing in particular regarding an adopted son’s succession to the property of a bandhu; and even if they had, their doctrine could not be of any weight against the doctrine of the paramount authorities aforesaid. It appears, however, that the learned gentleman himself has subsequently laid down his principle of the law, with regard to the point in question, contrary to the former Vyavasthā and the inference; that is to say, after having published the Vyavasthā and inference in question in Vol. II. (of his work on Hindu Law) which contains the admitted law opinions, and was published in 1828, he, in Vol. I., which was published in 1829, and contains his doctrine and principles of Hindu law, having consulted and considered the text of Mānu and the doctrines of the Dīya-bhāga, Dattaka-chandrikā, and other authorities, has, in spite of the Vyavasthā and the inference in question, laid down the principle to the effect that ‘an adopted son by the dattaka form succeeds collaterally as well as lineally: this may now be fairly said to be set at rest; and that a son so adopted has no legal claim to the property.

* See ante, pp. 953—957.
of a *bandhu* or cognate relation." He has then given his reason why a *dattaka* son has no legal claim to inherit from a cognate relation; and, as a precedent of the principle laid down by him, he has cited the case of Gunga-mya *versus* Kishen-kishore and others,* which was decided according to the latter of the two conflicting *Vyavasthās,* and this (latter) *Vyavasthā* is based upon the doctrine of *Kulākā Bhatī.* Thus when, having already published a *Vyavasthā,* he has afterwards published another directly opposed to the former, though relating to the same point, and has, in accordance with the latter, laid down his principle of the law, then it is quite clear that the learned compiler has rejected the former *Vyavasthā* and the inference in question, and approved of the latter *Vyavasthā;* particularly when the principle of the law laid down by him entirely corresponds with the latter *Vyavasthā.*—Indeed, it is not the former, but the latter *Vyavasthā* and his principle that are in accordance with the law in force.

**CASE NO. 8 OF 1858.**

**LOKE-NATH ROY AND OMA-KAUNT ROY, (PLAINTIFFS) APPELLANTS,**

**VERSUS SHAMA-SOONDUREE, (DEFENDANT)**

**RESPONDENT.**

This case was admitted to special appeal on the 7th of January 1858, under the following certificate recorded by Messrs. B. J. Colvin and A. Scouge.

"Bam-deb, Ram-deb, Kisho-deb, and Moha-deb Roys were four brothers. Ram-deb died childless; Bam-deb had a son, Ram-manik, whose widow was Moha-mayee Debea; Kisho-deb left two grandsons, Raj-chunder and Sumbhoo-chunder; while Moha-deb left an adopted son, Sheeb-chunder whose daughter was Shama-soonduree. Petitioners, sons of Sumbhoo-chunder sued Shama-soonduree for what she held, ½ of the estate of Moha-mayee Debea, on the ground that she, the daughter of an adopted son, could not inherit as kindred of the blood. They got a decree in the first court, which was reversed in the lower appellate court, as it was founded on the law of inheritance according to the *Dāya-bhāga,* whereas the code of *Manu,* which permitted the descendant of an adopted son to inherit as one by blood prevailed in Dacca.

---

* Post p. 969. † See ante, pp. 956,957.
The pleas urged are that the Dáya-bhóga prevails throughout Bengal, so that the case should not be judged by the code of Manu, and that by the Dáya-bhóga the adopted son is excluded from sharing with those of the blood, and that, even if he be not, his daughter has no right.

"We admit the special appeal to try these points."

**Judgment.**

The real question raised before us in special appeal is whether, according to the law of adoption prevalent in Bengal, an adopted son succeeds collaterally as well as lineally in the family of his adoptive father. Macnaghten in his elements of Hindoo law, (Vol. I, page 69,) uses the following language. "The adoption (according to the dattaka form) being once completed, the son adopted loses all claim to the property of his natural family, but he is estranged from his own family partially only. For the purposes of marriage, mourning &c. he is not considered in the light of a stranger, and the prohibited degrees continue in full force as if he had never been removed. His own family have no claim whatever to any property to which he may have succeeded; and in the event of a son so adopted having succeeded to the property of his adopting father, and leaving no issue, his own father cannot legally claim to inherit from him, but the widow of his adopting father will succeed to the property. He becomes (with the exception above noticed) to all intents and purposes a member of the family of his adopting father and he succeeds to his property collaterally as well as lineally (Manu, Chapter IX;) but excepting the case of the peculiar adoption termed dvyámushyáyana, he is excluded from participating in his natural father's property." Again, at page 78 of the same work, the learned author observes: "Another point which has been the subject of much discussion is as to whether an adopted son by the dattaka form succeeds collaterally as well as lineally, but this may now be fairly said to be set at rest and decided in the affirmative. It is true that Jímúta-váhana in the Dáya-bhóga has contended that the son adopted in the dattaka form cannot succeed to the property of his adopting father's relations; but the doctrine, being in opposition to the text of Manu, cannot be held entitled to any weight."

In conformity with the doctrine laid down in the above text book, this court has on two several occasions answered the question before the
Court in the affirmative on two cases coming up severally from Mymensing and Rajshahye, parts of the Country in which the Dāya-bhāga is current. In the first case, reported at page 709 of 1st volume of the select reports, Messrs. Colebrooke and Foubelle, the former a name of great weight in a question of Hindoo law, gave their authority to the doctrine; and in the second case reported at page 203 of the 6th volume of the select reports, the pundits of this Court in their vyavastha held, "that a valid adopted son must be considered as a member of the gotra of his adopting father; and legally entitled to the property of his adopting father's sapindas. This opinion is conformable to Manu, although the court directed that our vyavastha should be delivered according to the law of Bengal; and of all the authorities the Dāya-bhāga is there most prevalent: and although it is the opinion of Jñāna-vāhana, quoting the text of Deva, and adopting his order of enumeration, that the son affiliated in the dattaka form is not, an heir of collateral relations, (sapindas, &c.) nevertheless, as many vyavasthas have been delivered in the court establishing the adopted son's collateral succession according to the law promulgated by Manu, this opinion is delivered according to the same law." In accordance with this vyavastha the Court gave judgment in favor of a son of an adopted son urging his right to succeed to the property of kinsmen, sapindas of the family of his adopting grandfather.

It would seem therefore that in the particular form before us the text of the Dāya-bhāga has been declared by a writer of great authority to be opposed to the general doctrine of Hindoo law: and being such, it has been disregarded by this court on two several occasions. Such being the case, we do not feel ourselves at liberty, even if we denied so to do, to revert to the bare text of the Dāya-bhāga as a supreme authority, but, in accordance with the precedents of the court answer the question before us in the affirmative.

It will be observed that the present question only refers to succession to the property of sapindas, agnates of the adopting father. With the case of bandhoos, or cognate relations, the question before us has no concern.

As then the adopted son has a right to succeed, there can be no question that, having succeeded, his daughter, in Bengal, is entitled to succeed him. With this view of the case we dismiss the special appeal, with costs.—The 30th of September 1853. S. D. A. D. p. 1863.
SHAM CHUNDER AND ROODER CHUNDER, APPELLANTS, VERUS NARAYNI DEBEB AND RAMKISHORE ROY, RESPONDENTS.

This was an action brought by Sham-chunder and Rooder-chunder in the Zillah Court of Mymunsing, to recover from Narayni Debeh and Ram-kishore Roy, a 4 anna share of Pergunnah Mymunsing, forming the estate of the late Kishen-kishore Roy. The family of the parties was as follows;—Sri-kishen, Zemindar of Mymunsing, &c. left four sons, the 1st and 2nd by one wife; the 3rd and 4th by another.—1st Kishen-kishore Roy, the Zemindar of the 4 annas in dispute died in 1171, without issue leaving two widows,—1st Ruttun-mala, who died in 1191, after adopting Nund-kishore; 2nd Narayni Debeh (defendant) adopted Ram-kishore Roy (defendant) after Nund-kishore's death.—The 2nd son Gopaul-kishore, had no issue, but an adopted son Joogul-kishore; the 3rd son Gunga-naraen left neither issue nor a widow; the 4th son Lukhoo-naraen left two sons, viz. Sham-chunder and Rooder-chunder (plaintiffs.) The plaintiffs, in support of their claim to the 4 anna share in dispute, alleged, that the defendant, Narayni Debeh, had not been duly empowered to adopt Ram-kishore: that, on the decease of Nund-kishore, adopted by Ruttun-mala, the Zemindar's elder widow, and therefore by law proprietor of the whole 4 anna share, the plaintiffs were his heirs, as nephews of Kishen-kishore, his adoptive father. The defendants, first, contradicted the assertion of the plaintiffs with respect to the illegality of Ram-kishore's adoption; second, insisted that the plaintiffs were only sons of the half brothers of the adoptive father of Nund-kishore and the distant decree of relationship which they bore to Nund-kishore would not entitle them to succeed to his property. On referring to the proceedings in another cause before tried by the Zillah Court, it appeared to the Zillah Judge, that the question at issue had been already virtually decided. In the cause alluded to, a claim had been preferred against Narayni Debeh, by Joogul-kishore (who was adopted by Gopaul-kishore, brother of Kishen-kishore) for 2 annas of it, by right of succession to Nub-kishore. Evidence was at that time taken as to the adoption of Ram-kishore by Narayni Debeh under authority from her husband; and it was deposed by witnesses, that permission had been granted her verbally, in their hearing. On the ground of this being related by the witnesses from memory, after a long lapse of time, and of its being thought that suspicion attached to some documents brought
forward on the occasion, it was not thought proper to admit the adoption. A reference was then made to the pundit of the Court, as well as to those of the adjacent Zillahs and of the Sudder Dewanny Adawlut, to ascertain whether the succession to the 2 annas, held by Nund-kishore was vested, by the Hindu law, in Narayni Debeh, the surviving widow of Kishen-kishore; or in Joogul-kishore, the adopted son of Kishen-kishore's brother; or in Sham-chunder and Rooder-chunder, sons of his half brother? The answers returned by the pundits of several Zillahs, were contradictory; but the solution of the question, as given by the pundits of Zillah Tipperah and Sudder Dewanny Adawlut, was that Joogul-kishore, as adopted son of Kishen-kishore's brother, was legal heir to the 2 anna share; and judgment was passed accordingly in Joogul-kishore's favour. In the present case, therefore, the Zillah Judge being of opinion that the plaintiffs (Sham-chunder and Rooder-chunder) were not entitled to any part of the 4 anna share in dispute, judgment was given against them in the Zillah Court, with costs.

The plaintiffs appealed from the above decision to the Provincial Court of Dacca. It appeared that, on the 4th of December 1801, a decree was passed in appeal by the Sudder Dewanny Adawlut, in a cause between Narayni Debeh and Hur-kishor (son of Joogul-kishore who was adopted by Gopaul-kishore,) on which appeal the pundits of the Sudder Dewanny Adawlut gave an opinion, that the heir of Nund-kishore would be Hur-kishore, not Narayni Debeh, as she was not mother, but stepmother; but that if she had authority to make an adoption, then Ram-kishore, having been adopted by her, would be heir to Nund-kishore, as his adoptive brother. The Provincial Court were satisfied with the evidence given in the former cause, in the Zillah Court of Rungpore, with respect to the authority for adopting Ram-kishore, and held it to be established that he was duly and legally adopted; and it being in consequence considered that the appellants were entitled to no part of the 4 anna share, the appeal against the Zillah decree was dismissed with costs.

On a further appeal by Sham-chunder and Rooder-chunder to the Sudder Dewanny Adawlut (present H. Colebrooke and J. Fombelle,) the pleas set up by them against the foregoing decree were, first, that the adoption of the respondent Ram-kishore, being a second adoption in the family of the same man, was illegal; second, that, even admit-
ting two adoptions to be legal, one adopted son could not succeed to the property of the other adopted son, as the collateral heir. The questions of Hindoo law, connected with the case, were proposed by the Court to their pundits in the following form: "After the death of Kishen-kishore, zemisdar of the 4 anna estate, without issue, his elder widow having adopted Nund-kishore; and when the elder widow, and Nund-kishore died, his younger widow having adopted Ram-kishore; and claims to the estate having been preferred by Ram-kishore; by Joogul-kishore, the adopted son of Kishen-kishore's brother; and by Sham-chunder and Rooder-chunder, sons of Kishen-kishore's half brother; which of the claimants is heir at law to the property? and in the case of two adopted sons of a common adoptive father, can one, on the decease of the other, succeed to his property as the collateral heir?" In answer to this reference, it was stated by the pundits, that "if, after the death of Kishen-kishore, his elder widow, duly authorised, adopted a son, that son was proprietor of the estate; and if, after the death of that son, the younger widow also adopted a son, under due authority, then, provided the adopted son of the elder widow left no issue, or brother by the mother who adopted him, his property would devolve on the adopted son of the younger widow of Kishen-kishore, and not on the adopted son of Kishen-kishore's brother, or on the sons of his half brother. The succession to one adopted son is vested in the other adopted son, as being the nearest collateral." The Court of Sudder Dewanny Adawlut agreed with the Provincial Court of Dacca, with respect to the adoption of Ram-kishore by Narayni Debeh being proved to have been duly authorised; and as, under the above opinion of the pundits, it appeared that two adoptions in the family of the same man are valid; that an adopted son succeeds collaterally as well as lineally in the family of his adoptive father; and that Ram-kishore was the rightful heir to the whole 4 anna estate in contest, the claim preferred to it by the appellants was pronounced to be inadmissible. The appeal was in consequence dismissed by the Sudder Dewanny Adawlut, with costs. (a) August, 21st., 1807.—S. D. A. R. Vol. I. p. 209.

(a) The right of a son by adoption to inherit from his collaterals, in the family of his adoptive father, was established by the decision in this cause, as well as the lawfulness of two successive adoptions, by the widows of the same person, under authority for that purpose from their husband. (Note by the Reporter, that is, Sir William Macnaghten.)
Ganga-myā versus Kishen-kishore Choudhooree.

Case bearing on the Vyavastha No. 683.

A person named Shib-nauth died leaving a pregnant widow (named Bhago-vutty) and an uterine brother named Gobind-prosaund. Subsequently his widow brought-forth a daughter who was named Ganga-myā. The widow then died leaving the daughter who was married long after her death. Subsequently, Gobind-prosaund (brother of the original proprietor) died leaving a son named Kishen-kishore. A few years after this, Ganga-myā's husband died leaving her a barren childless widow, but permitting her to adopt. Held that Ganga-myā is the lawful heir on the death of her mother, but she (Ganga-myā) has only a life interest; that on her death, the estate should revert to the son of her father's brother, to the exclusion of her (Ganga-myā's) adopted son.—17th. December 1821, S. D. A. Rep. Vol. III. pp. 128—132.

The Vyavastha upon which the above decision is founded was to the following effect: On the death of Shib-nauth, his property belonged of right to his widow Bhago-vutty, and not to his brother Gobind-prosaund; for the estate of him who dies leaving no other heir, down to a great grandson, devolves, by the law of inheritance, on his widow. On the death of Bhago-vutty, the estate she had inherited from her husband, should devolve on her daughter, who was unmarried at the time of her husband's death, and not on the brother of Shib-nauth, for, by the law of inheritance, of the three descriptions of daughters, that is, the unmarried daughter, the married daughter, whose husband is living and of whom there is a probability of a son being born, and the daughter who has borne a son, the first mentioned has the best title to the succession in default of other preferable heirs. But the son adopted by Ganga-myā, by the consent of her husband, has no title to the estate to which she had succeeded, because, according to Dāya-bhāga, an adopted son has no legal claim to the property of a bandhu or cognate, and according to the interpretation of the text of Manu which admits adopted sons to the right of succession collaterally, the meaning is succession to the property of persons belonging to the same family as the adopting father, as fully appears from the Manvartha Muktiāvali compiled by Kullāka Bhatta and other authorities. On the death of Gunga-myā, therefore, the estate left by her father, to which she had succeeded on the death of her mother, and her right to which was limited to a life-interest, should devolve on Kishen-kishore, the bro-
ther’s son of her husband, because when an estate devolves on a childless widow, who is held to be half the body of her husband, it reverts at her death to the heirs of her husband. So an estate which had devolved on a daughter, who has a weaker claim, should a fortiori, revert to the heirs of her father.

Vyavastha. 634. The right of the relations of a different race, as well as those of the same race, to inherit from a dattaka is, however, unquestionable.

Reason. For there is no impediment to their succession to the property of a dattaka relation, the same not being prohibited by any authority.


Cases bearing on the vyavastha No. 634.

I. Deb-naraen Roy sued Heera-munee in the Calcutta Court of appeal to recover the sum of rupees 19,482-6 annas due on a bond. Whilst the suit was pending, the plaintiff died; and his four daughters, Sooda-moyee, Kewul-munee, Anund-moyee, and Seeb-soondaree, claimed to be put in his place, as heirs. This was done. Subsequently, Sooda-moyee died; and her son, the present appellant, came in her place and compromised the case with the defendant. Kewul-munee appealed summarily from the decision founded on the compromise; and, on the 14th of August 1849, Mr. Reid ordered that Kewul-munee’s claim as a plaintiff should be investigated and the case re-admitted on the file for that purpose. The case then stood thus: as the defendant had virtually admitted the reality of the loan by entering into a compromise, the question to try was, who was entitled to the decree? The acting Judge rejected the appellant’s claim, because it was not true that Thakooraeen Dossy had adopted a son; and because the question of the real right of ownership could not be decided by a mere summary award of possession. The Sudder Court (present Mr. Gordon) seeing no reason, upon an examination of the proceedings, to dissent from the above judgment, upheld it accordingly, dismissing the appeal, with costs.
Subsequently, on the 6th. of February 1847, Mr. Gordon, entertaining doubts of the correctness of his decision, admitted a review of judgment, at the instance of Sree-nauth Mitter (one of the appellants.)

The case then came before Mr. Jackson, who directed inquiry to be made into the fact of the adoption of a son by Deb-naraen Roy, and further, if the adoption was proved, who were living among the grandchildren at the time of the death of this adopted son, and, consequently, were entitled to succeed that adopted son as heirs.

To this a return has now been received, showing that Deb-naraen Roy did adopt Ram-naraen Roy as his son, and that Ram-naraen survived his adoptive father and mother; and that the grand-children of Deb-naraen, surviving Ram-naraen, were Sree-nauth Mitter, Gunganaraen (since dead,) and Mohendar-naraen (since dead,) sons of Musht. Sooda-moyee daughter of Deb-naraen; Kishen-gobind, son of Kewul-munee, (his three brothers were born after the death of Ram-naraen,) daughter of Deb-naraen; Pearee-mohon (since dead,) son of Anund-moyee, also dead.

The fourth daughter of Deb-naraen, Shib-soondereen died without issue.

Both in the Lower Court and by Mr. Gordon in his final judgment, it was declared that the arrangement (ruffa-namah) between the defendant Heera-monee and Sree-nauth must be considered an admission of the justness of the claim under the bond. The Judge, on this ground, gave an award in full to the plaintiff, throwing out the ruffa-namah. From this decision no appeal has been made by the defendant; and it appears to be perfectly correct as regards her.

But the plaintiff Deb-naraen having died, it is necessary to determine who shall benefit by this decree. The judgment of the Lower Court, confirmed by Mr. Gordon, awarding the whole to Deb-naraen's daughter Kewul-munee, is evidently erroneous in this respect. It is established that Deb-naraen adopted a son Ram-naraen who succeeded exclusively to his father's property, and to the decree among the rest. On Ram-naraen's death the succession devolved on the children of the daughters of Deb-naraen then living. These were—Sree-nauth Mitter, (entitled to) 1-5th share; Gunga-naraen (since dead) his heir 1-5th ditto; Mohender-naraen (since dead) his heir 1-5th ditto; Kishen-gobind 1-5th ditto; Pearee-mohon (since dead) his heir—1-5th ditto. There is no one in Court but Sree-nauth; Kishen-gobind having neglected to ap-
point a

ordered, therefore, that a decree issue against defendant
for the sum claimed in full, declaring the above mentioned parties, or
their heirs, entitled to benefit by it to the extent noted against their
names respectively.—Sudder Decision dated the 21st. of June 1848.

GUNGA-PERSAUD ROY, (Plaintiff,) APPellant, versus
BRIJESURUKE CHOWDHRAIN, BUNWAREE-LOLL
ROY AND OTHERS, (Defendants,)
RESPONDENTS.

II. The Plaintiff, calling himself the next male heir to Gour-
soonder Roy deceased, sought by this action to secure possession of his
zemindaree, on the ground that Brijessuree, the widow in possession,
had adopted Bunwaree-looll without any permission, and was doing other
acts prejudicial to his rights as next heir to the property.

The defence denies that Bunwaree’s adoption is without permission;
but even if it be so, Bunswaree-looll denies any right in the plaintiff as
heir of Gour-soonder. The preferable heir was alleged to be Kisto-
beharee Roy, son of the deceased Gour-soonder’s maternal uncle.
The plaintiff replied that Kisto-beharee could not be the heir of Gour-
soonder, who was himself an adopted son, first, because Kisto-be-
haree’s father and the adopting mother of Gour-soonder were not own
brother and sister, but by different wives; second, because an adopt-
ed son could not be succeeded by the maternal relatives of the
adopting family.

The Zillah Judge, after consulting the purdit, who said that,—‘ in
either event, the plaintiff could not represent Gour-soonder in preference
to Kisto-beharee, who is undoubtedly the next heir,’—decided the suit
by dismissing the plaintiff’s claim, on the ground that he was not en-
titled to sue as the heir of Gour-soonder. It was intimated to the
(Sudder) Court that plaintiff’s appeal involved no question of fact, and
was preferred on the point of Hindoo law involved in the lower Court’s
judgment. The case was therefore called up and heared under sec-
section 12, Act XV of 1853.

Appellant’s pleader admits that the line of successive heirs demar-
cated would be followed if Gour-soonder had been the natural born
son of Kishen-soonder, but he denies the right of the maternal relation
to succeed in the case of an adopted son. He argues that adoption is
the act of the man, and can be done without marriage, but can never be done by the woman without the express permission of her husband. The pleader refers to the case of Gunga-mya, page 128, Vol. III. of the Select Reports, and page 187, Vol. II. of Macnaghten's Hindoo Law, and reasons from this by analogy that, as the adopted son is declared to be no heir of the adoptive mother, neither can she take the estate of the adopted son on failure of nearer heirs in her husband's family.

Baboo Ruma-prasaud Roy entered into a long and elaborate explanation of the Hindoo law of inheritance. As the only question before us was one of pure Hindoo law, we did not consider ourselves competent to decide the point, without calling for a vyavastha from the pundit of the Court. As it appeared to us that the point must be decided on the general ground of,—whether an adoptive mother's relations succeeded an adopted son under the same circumstances that would govern their succession to a natural born son,—we put the question in that form, and the reply of the pundit being in the affirmative and the authorities quoted being derived from well recognised works on Hindoo law, we have seen no reason to interfere with the judgment passed by the lower Court, and uphold it, with costs against the appellant.—Sudder Dewanny Adawlut. The 30th of July 1859.

Vyavastha. 635. If there exist another son of the proprietor, then the adopted son of his deceased son will get such share as an adopted son would have been entitled to.†—D. Ch. Sans. p. 30.

Vyavastha. 636. Should there exist no son, the adopted son of the deceased son will take the whole property.†—Ibid.

Vyavastha. 637. An adopted son's legitimately begotten son is entitled to an equal share with the legitimately begotten son of his grandfather by adoption; and in default of such uncle, he is entitled to the whole property.—D. Ch. Sect. v. § 25.

* Ante, p. 970. † Ante 961.

† The original of these two Vyavasthas is in the Sanscrit Dattako-chandrika, but an English version thereof is not to be found in Mr. Sutherland's translation of the work: the same must have been inadvertently omitted.
Vyavastha. 638. The same rule is to be applied by inference to the great grandson also.—D. Ch. Sect. V. § 25.

Reason. For, the special rule is, that grandsons, whose father is dead, take such share (of the heritage) as would have devolved upon their father of the same description as themselves.—Ibid.

Authority. 'Since it is a restrictive rule, that a grandson succeeds to the appropriate share of his own father,* the son given, where his adopter is the real legitimate son of the paternal grandfather, is entitled to an equal share even, with a paternal uncle, who is also such description of son; therefore, a grandson, who is an adopted son, may (in all cases) inherit an equal share even with an uncle.'—This must not be alleged (as a general rule.) For there would be this discrepancy: where the father of the grandson were an adopted son, he would receive a fourth share,† but the grandson, if he were such son (of him,) would receive an equal share (with an uncle in the heritage of the grandfather.) And accordingly whatever share, may be established by law, for a father of the same description as himself, to such appropriate share of his father does the individual in question (viz. the adopted son of one adopted) succeed. Thus, what had been advanced, only is correct.—The same rule is to be applied by inference to the great grandson also.—D. Ch. Sect. V. § 25.

Vyavastha. 639. The heir of an adopted son succeeds collaterally as well as directly.

Case NO. 166 OF 1858.

Kishen-nauth Roy (one of the Defendants,) Appellants versus Huree-gobind Roy and others (Plaintiffs,) Respondents.

Case bearing on the vyavastha No. 639. This case was admitted to special appeal on the 4th March 1858, under the following certificate recorded by Messrs. B. J. Colvin and J. S. Torrens. "This was a suit referring to the property left by one Nursing-deb Roy, who

* See ante, pp. 20, 21.
† In Bengal, a third share: see ante, p. 909.
died without issue. The plaintiffs are the sons and grandsons of one of the half brothers of Nursingh-deb, Ram-kissen, and they sue for succession to the whole of the property of Nursingh, making the petitioner a defendant. The petitioner is the son of an adopted son of another half brother of Nursingh's called Teloke-chunder, and claims to participate in the property along with the heirs of the elder half brother. This claim having been rejected by the decision of the principal Sudeer Ameen, on the ground that, according to the vyavasthā of the pundits, the heirs of an adopted son could not succeed collaterally, petitioner urges such decision to be opposed to Hindoo law, as laid down at page 78 of Macnaghten, and page 219 of Sutherland's translation of the Dattaka-chandrikā, as well as to precedents of this Court, as found at page 203 of Volume VI. of the select reports and elsewhere. We admit the special appeal to try whether the decision of the question of Hindoo law should be upheld."

JUDGMENT.

It is averred by the counsel for the special petitioner, that Nursingh-deb Roy died in 1215, leaving a widow, Tara-monee who continued in the enjoyment of his property till her death in 1228. Her daughter-in-law, Komul-monee, then succeeded, and after her death, as alleged by the plaintiffs, Hur-soonderee, widow of Gokool-chunder Roy, a full brother of Nursingh-deb Roy, adopted without permission, a son named Bhoobuneswur, and in collusion with the defendant special petitioner, obtained possession of the property of Nursingh-deb. The five plaintiffs, who are the sons and grandsons of two half brothers of Nursingh-deb sued to set aside the adoption and to obtain possession of the property left by Nursingh, and made the special appellant, Kishen-nauth Roy, a defendant in the suit. His answer disclosed that his father, Kallee-nauth Roy had been adopted by Teloke-chunder Roy, another half brother of Nursingh-deb Roy, and as one of the family by adoption, he claimed a sixth of the property in litigation. The lower Courts have given decrees for the plaintiffs, and rejected the (defendants') special appellants' claim, on the ground that the son of an adopted son is not entitled to share with the other collateral heirs; and the point to be determined is, whether the heir of an adopted son can succeed collaterally as well as directly and whether the vyavasthā of the pundits of Daecca and 24 Pergunnah, Courts, on which the
ting two adoptions to be legal, one adopted son could not succeed to the property of the other adopted son, as the collateral heir. The questions of Hindoo law, connected with the case, were proposed by the Court to their pundits in the following form: “After the death of Kishen-kishore, zamindar of the 4 anna estate, without issue, his elder widow having adopted Nund-kishore; and when the elder widow, and Nund-kishore died, his younger widow having adopted Ram-kishore; and claims to the estate having been preferred by Ram-kishore; by Joogul-kishore, the adopted son of Kishen-kishore’s brother; and by Sham-chunder and Rooder-chunder, sons of Kishen-kishore’s half-brother; which of the claimants is heir at law to the property? and in the case of two adopted sons of a common adoptive father, can one, on the decease of the other, succeed to his property as the collateral heir?” In answer to this reference, it was stated by the pundits, that “if, after the death of Kishen-kishore, his elder widow, duly authorised, adopted a son, that son was proprietor of the estate; and if, after the death of that son, the younger widow also adopted a son, under due authority, then, provided the adopted son of the elder widow left no issue, or brother by the mother who adopted him, his property would devolve on the adopted son of the younger widow of Kishen-kishore, and not on the adopted son of Kishen-kishore’s brother, or on the sons of his half brother. The succession to one adopted son is vested in the other adopted son, as being the nearest collateral.” The Court of Sudder Dewanny Adawlut agreed with the Provincial Court of Dacca, with respect to the adoption of Ram-kishore by Narayni Debeh being proved to have been duly authorised; and as, under the above opinion of the pundits, it appeared that two adoptions in the family of the same man are valid; that an adopted son succeeds collaterally as well as lineally in the family of his adoptive father; and that Ram-kishore was the rightful heir to the whole 4 anna estate in contest, the claim preferred to it by the appellants was pronounced to be inadmissible. The appeal was in consequence dismissed by the Sudder Dewanny Adawlut, with costs. (a) August, 21st., 1807.—S. D. A. R. Vol. I. p. 209.

(a) The right of a son by adoption to inherit from his collaterals, in the family of his adoptive father, was established by the decision in this case, as well as the lawfulness of two successive adoptions, by the widows of the same persons, under authority for that purpose from their husband. (Note by the Reporter, that is, Sir William Macnaghten.)
has been an adoption of a son of Komula Debea or not. The reasons for drawing this as the only issue are these. The plaintiff alleges that Pran-nauth, the husband, dying gave both his widows the power to adopt, each three sons in succession. Under this permission, she herself adopted a son who died, after there had been a separation of their respective interests in the property. She however denies that Komula, the elder widow, ever did adopt a son, and that consequently now Komula is dead, she succeeds to the share she held as the surviving widow of Pran-nauth. Her pleaders admit that, if Komula had really exercised the permission given her and adopted a son, the property held by Komula after the decease of the adopted child, would not revert to her, but go to the heirs in her husband's family. As therefore the defendants assert that Komula did adopt Kallee-nauth, who died very young, and are consequently holding under the rights of succession to him, the question to be tried is whether that adoption ever took place.

The evidence on this point consists of a petition and mooktear-namah, in both of which Komula Debea styles herself the mother of Kalle-nauth, and there is a roobakarsee of the 6th October 1811 referring to the fact of these documents being filed, it therefore affords unquestionable proof of the genuineness of the papers, and as far as they go, they tend to the belief that Komula Debea herself acknowledged Kalle-nauth to be her son, while the date is so far back that at all events it is safe to conclude the acknowledgment was on her part disinterested. Previous to that time is dated the petition of the 11th Aghun 1245 B. S. in which she reports the adoption to the collector, regarding which so much has been recorded by the Principal Sudder Ameen.

It may then fairly be said that we have before us substantial proof that Komula during her life time, by public and private acts of her own, acknowledged, relationship of Kalle-nauth, and to those acts there is so reason to attribute fraudulent motive of any kind, there is also the position in which she stood to the plaintiff, and the terms on which she held her share of the property, all tending to the exercise of such a power as she is said to have possessed; and it is difficult to conceive what reasons could have induced her to acknowledge Kalle-nauth as her son, and at the same time with-hold from him or abstain herself from doing all that would legally entitle him to profit by the acknowledged relationship established between them.
It is true, there is no positive proof of actual performance of all that the Hindoo shasters, inculcate, but there is no proof of a nature to nullify any presumption that they were duly performed. In fact, the plaintiff, though alleging an adoption on her own part, has not attempted to prove that such was attended by any such demonstrations of the fact as we find were made publicly on the part of Komula. On the whole, we are satisfied that Kallee-nauth was adopted, and that plaintiff's claim to the property should not be admitted.

We therefore reverse the Principal Sudder Ameen's decision with costs of both courts on the plaintiff. 30th April 1856.—S. D. A. D. p. 359.

Vyavastha. 640. The adopted son of a Shúdra inherits in equal shares with the legitimately begotten son during the life-time of the adopter, but gets half of that son's share after the adopter's death. (See ante, pp. 913—915.)

Authority. The equal partition of the son of the wife, the son given, and the rest, with the real legitimate son, whilst the father lives, and their succession to the moiety of the share of such son, where the father may be dead at the time of partition, follow a fortiori.—D. Ch. Sect. V. § 30.

Remark. The above Vyavastha is, however, applicable to the lower classes of shúdras of this country: inasmuch as here the inheritance of the good or high caste shúdras, whose conduct in other respects is like that of the twice-born men, is also customarily regulated like that of the regenerate classes. See ante, pp. 913—915.

SUCCESSION OF A DWYAMUSHYÁYANA AND THE REST.

Vyavastha. 641. The son given, who is a Dwyamushyáyana (son of two fathers,*) if both his adoptive and natural fathers have no other male issue, takes the whole estate of both.—D. Ch. Sect. V. § 33.

Vyavastha. 642. One adopted, where legitimate issue (of the adopter) existed, does not participate in the estate of the adopter.—Ibid.

* See ante, p. 846.
Vyavastha. 643. But a legitimate son, being born (to the natural father) subsequent to the adoption, the adopted son takes out of the natural father’s estate* half of the share of a legitimate son. (If, however, such issue be subsequently born to the adopter, the adopted in question) takes half of the share which is prescribed by law for an adopted son, exclusively related to his adoptive father,† (where legitimate issue may be subsequently born to that person.)—Ibid.

* The portion in Italics is omitted in Mr. Sutherland’s translation.
† See ante, pp. 909, 910.

Where, subsequent to an adoption legally made, a legitimate son is born to the adopter, the adopted son, at a division of the heritage with such son, receives a quarter share (but see ante, p. 909.) according to the Dattaka-chandrika. A distinction, however, obtains in the case of the Daya-mushadhyayana. From an obscure part of that work it would appear to be the doctrine of its author, that such son would only take half the share, to which the son, absolutely adopted, would be entitled, in participating with a legitimate son, subsequently born.—On the same principles, this author appears to provide that, where legitimate issue is subsequently born to the natural father, the Daya-mushadhyayana only takes, in the estate of such father, the half of the share of a legitimate son.—Sutherland’s Synopsis, Head Fifth, p. 154.

Sir William Macnaghten says:—“With a legitimate son subsequently born, the Daya-mushadhyayana takes half a share of his adopting father’s property.” (Vol. I. p. 71.) and as authority for the same, he refers to the Dattaka-chandrika (Sect. V. § 33,) that is, the Vyavastha’s Nos. 641,642, and 643, quoted hereinabove, on reference to which it appears that the above dictum of the learned gentleman is erroneous, and not in conformity with the passage of the Dattaka-chandrika cited;—inasmuch as it is clear from the passage in question that a legitimate son being subsequently born, the Daya-mushadhyayana does not inherit half of the whole estate of the adopter, but is, in that case, entitled to half of the share which an adopted son exclusively related to the adopter would have been entitled to.—The fallacy of the dictum may also be evinced in another way, namely, if in the above case, the Daya-mushadhyayana is entitled to half of his adopting father’s property (as held by the learned gentleman,) then the remaining half necessarily becomes the portion of the legitimately begotten son, and thus the dictum in question proves to be contrary to the principle of the law and inconsistent with reason:—contrary to the principle of the law, because, the rule is: (see ante, pp. 909, 910) that, “where a legitimate son is born subsequent to the adoption, the adopted son takes one third, and the legitimately begotten son is entitled to two thirds;—inconsistent with reason, because, a legitimate son, subsequently born, having the right to perform all the religious rites beneficial to the late proprietor’s soul, is justly and deservedly entitled to the double share (as ordained by the law) of the adopted son. (See his own work, Vol I. p. 70.)”

Thus the dictum that a Daya-mushadhyayana son is to have an equal share with a legitimately begotten son, is contrary not only to the law and reason, but also to the principle laid down by himself.
644. The son and son’s son of a Nitya-dwyā-
mushyāyana succeed also in the same manner.

645. The children of an Anitya-dwyāmushyā-
yana, having no relation with the family of the
adopter * it is inferred, by analogy, as well as by equity, that
they are not entitled to inherit from them.

646. The exclusively given sons and Dwyā-
mushyāyanas adopted by persons blind, lame or
otherwise disqualified from inheriting, and so forth, have no
to the estate of their adoptive grandfather’s estate, but
right to maintenance only. •

Authority. As sons, blind, lame, and so forth, † do not inherit,
and since it is ordained, that their legitimate son,
and son of the wife only, participate in the estate of the paternal
grandfather, a son given or other description of son, adopted by such

* See ante, pp. 909, 910.

† A doubt might be entertained, as to the validity of an adoption, by one not being
in the order of the ‘Grīha’ (the house-holder or married man,) or by a blind, impotent,
or other person, disqualified from inheriting. The more correct opinion, however, ap-
pears to be, that an adoption, by any of the persons described, would be valid; though it
seems reasonable, that the affiliation of one excluded from inheritance, should confer no
right of succession on the adopted, of which the adopter is debarred by law.—Sutherland’s
Synopsis, Head First, p. 148.

The individuals excluded from inheritance are, “the impotent person, the outcast and
his issue, one lame, a mad man, an idiot, a blind man, a person afflicted with an incur-
able disease, and others similarly disqualified,” (See Chapter VIII.)—The possibility of
a doubt, as to the legality of an adoption, by such persons, is suggested with reference to
a passage in the Mitākṣharā, which declares, that the specific mention of ‘the legitimate
son and son of the wife, in a text of Jagñavalkya, providing for the inheritance of such
sons of disqualified persons,’ is intended to forbid the adoption, by them, of other sons.
The author of the Duttaka-chandrika likewise, arguing from the same or a parallel text,
that an adopted son, is not ordained for disqualified persons, excludes such son of those
persons from succeeding to the estate of the paternal grandfather. In the absence, how-
ever, of other authorities, those alluded to can hardly be admitted as sufficient to establish
a general rule, violating in toto the adoption by one excluded from inheritance.—In fact
the author of the Duttaka-chandrika without advancing such position, merely denies the
right of one so adopted to inherit of his adoptive father; and perhaps no more was intend-
ed by the author of the Mitākṣharā.—Sutherland’s Synopsis, Note iv, p. 155.
persons, has no right to the estate of the paternal grandfather, but to
maintenance only. For, alimony being provided for the wives of the
persons blind and so forth, maintenance for their adopted sons is in-
ferred *a fortiori*. So also, having previously declared sons blind, lame,
and so forth, not to be heirs (an author) adds,—"Of these, the sons
legitimate, and sons of the wife, who are free from defect, participate in a
share: the childless wives of those (who are blind and so forth) are
to be supported, if virtuous. Their daughters are to be maintained
as long as unmarried."—D. Ch. Sect. VI. § 1, 2.

**Vyavastha.** 647. From the dictum, that they have no
right to the estate of their adoptive grandfather,
it is inferred that *a fortiori* they have no right to the estate of
the relations inferior to the grandfather, namely, those other
than the parents, because their fathers (through whom they
claim) had no right to the property of such relations.

**Vyavastha.** 648. It follows, however, that the exclusively
adopted sons, as well as *Dvyâmushyâyana* sons,
are entitled to adoptive fathers' property, if any.

**Reason.** For they are no where prohibited to inherit their
adoptive fathers' own property.

**Vyavastha.** 649. A son adopted, notwithstanding the exis-
tence of a legitimately begotten son, has no
right to the property of the adopter.

**Authority.** Since it is shown, that a son given participates with
a real legitimate son, born subsequently to his adop-
tion, a son, adopted where a legitimate son exists, does not take a
share.—D. Ch. Sect. VI. § 3.

**Vyavastha.** 650. A son adopted, without the performance of the religious rites, ordained for the purpose,
is not entitled to inherit from such adopter, but to receive
wealth sufficient for his marriage.

**Authority.** Accordingly, an author declares the non-succession
to a share of one adopted without observance of
rules;—"Him existing, a son being created, and a son given exist-
Vyavastha. 651. A son adopted from a different tribe or caste is not entitled to inherit from the adopter.

Because, it is prohibited in the present (kali) age to adopt a son from a different caste.—See ante, pp. 821. et sequ.

Authority. It is declared by an author, in the following text, that a son given likewise, who is of a different class, does not inherit:—"If one of a different class should, however, in any instance, have been adopted, as a son, he should not make him the participator of a share.—This is the doctrine of Shounaka."—D. Ch. Sect. VI. § 4. See also Sect. I. § 14.

ADOPTION INDEFEASIBLE.

Vyavastha. 652. The adoption of a fit person made by the performance of the rites ordained in the Vedas cannot be rendered invalid by the omission to perform an unessential ceremony, or for any other cause.

Vyavastha. 653. After having adopted a son in due form, the adopter, by his will or other deed, cannot disinherit such son.

Vyavastha. 654. The adoption of an only son†, or the eldest son‡ (of a person,) if made by the performance of the rites ordained in the Vedas, cannot be invalidated or set aside, although it be deemed not to be a good one.

* See ante, pages 872—885.
† "Let no man accept an only son" because he should not do that whereby the family of the natural father becomes extinct: but this does not invalidate the adoption of such son (actually) given (Coleb. Dig. Vol. III. 243.) This opinion of Jagasatisha does not seem to be an inconsistent one, for if the giver give his only son in adoption causing his own lineage to become extinct, there is no reason why the adoption of such son should be invalid, though it be a blamable act.
‡ See ante, page 829 et sequ.
Vyavastha. 655. Like a lawfully begotten son, an adopted son also may resign his right to the property of his adoptive father, but nevertheless he cannot free himself from his connection and duties as adopted son.

Inasmuch as he was given and received solely to perform those duties as a son, and he could not be repudiated or discarded like a begotten son. But,—

Vyavastha. 656. If an adult adopted son make an agreement, stipulating the stability of his right to depend upon his performance of certain conditions, his non-performance of those conditions will cause his right to become extinct.*

SREE BRIJ-BHOKHUN-JEE MUHA-RAJ VERSUS SREE GOKOLOT- SAO-GEF MUHA-RAJ.

Case bearing on the vyavasthā No. 652.

I. Adoption, performed according to the ceremonies of the Vedas and Shástras, cannot be set aside from any want of formality, or other cause, should the person opposing it be ever so near a kin to the adopter.—The 5th of November 1817. Borradale’s Reports, Vol. I. p. 181. Morley’s Digest Vol. I. q. 24.

BHASKER BUCHA-JEE VERSUS NAROO RAGHOO-NAUTH.

II. Where a widow received instructions from her husband to adopt a son, and in accordance with them applied to her brother-in-law and his relations for a son, and they refused to give her one; it was held, that neither length of time nor after the decease of her husband, nor the adoption having taken place at other than the place of residence of the parties, nor want of permission of the Rulling authorities, are sufficient grounds for setting aside an adoption once made with sufficient ceremonies; and that a son so adopted becomes heir to the whole of his adoptive father’s property.—1826. Bombay S. D. A. Sel. Rep. p. 24. Vide Morley’s Digest, Vol. I. p. 25.

* See Macn. H. L. Vol. II, Ch. 6, Case 10, pp. 183, 184. See also ante, pp. 916, 917.
HUBBUT RAO MANKER versus GOBIND RAO BULWUNT.

III. Where an adoption is made contrary to the provisions of the Hindu law, the sin lies with the person giving, and not with the party receiving, and it cannot be set aside, as an adoption, having once been effected according to the forms of the Veda, cannot on any pretence be annulled.—1st Sessions. 1823, Borradaile’s Reports, Vol. II. p. 76. See Morley’s Digest, Vol. I. p. 24.

GOPEE-MOHUN DES versus RAJAH RAJKISHEN.

Cases

I. A Hindu having adopted a son, cannot disinherit such son by will.—East’s Notes, Case 75. Cons. H. L. pp. 230—233. See ante, p. 970.

II. A similar decision was passed in Sree-mutty Joy-mony Dossy versus Sree-mutty Shibo-sondry Dossy.—Vide Fulton’s Reports, p. 75, and ante, p. 970.

PRAN-BULLUS GOKUL versus DEO-KISHEN TOOLJA-RAM.

III. A Hindu having adopted a son, and from feelings of anger against him made a will in favor of him and his brothers, it was held that such will did not affect the adoption, and that he was not by reason of the existence of the will liable for his own father’s debts.—24th June 1824. Bombay S. D. A. Sel. Rep. p. 4. Morley’s Digest, Vol. I. p. 25.

VEERA-PERMALL PILLAY versus NARAEN PILLAY.

Cases

I. The adoption of an eldest or only son is improper, but not invalid.* If a man have two wives, and have by the first one son, and by the second several sons, the elder of those by the younger wife may be given and received in adoption.—The 5th of August 1801. Morley’s Digest, Vol. I. p. 16.

ARNACHELUM PILLAY versus JYASAMY PILLAY.


III. The adoption of an only son is valid, but both the giver and receiver incur sin.—Case of the Rajah of Tanjore. See Morley’s Digest, Vol. I. p. 16.

IV. The adoption of an only son, once made, cannot be invalidated.—The 30th of June 1825. S. D. A. R. Vol. IV. p. 70.

Case No. 405 of 1862.

Seeta-ram and others (Defendants) Appellants versus Dhunnoor-dhari Sahye (Plaintiff) and others (Defendants) Respondents.

V. The only ground of special appeal in this case as urged before us is that the adoption of Nursingh-naraen (an event which took place 58 years ago) was not a legal adoption, inasmuch as he was an elder son, and could not be legally adopted.

Looking, however, at the decisions, there seems to be no evidence that Nursingh-naraen was the eldest of the family at the time of his adoption, and precedents have been shown to us wherein it has been distinctly hold that the adoption of an elder son, though improper, is nevertheless not illegal.

There being then no weight or validity in the objection taken, we dismiss the special appeal with costs.—The 2nd of September 1862. Hay's High Court Decisions, page 260.

Ranee Bhudr Sheo Bhudr versus Roop-shunker Shunker-jee

Case bearing on the vyavastha No. 655.

I. As a lawfully begotten son may renounce his share in the estate of his father, even so an adopted son is at liberty to resign his right to the property of his adoptive father, although he cannot free himself from adoption, and should he so refuse to take property, and if the property to which he succeeds be a share of a divided heritage, the adopter's widow will succeed to it.—13th, May 1824. Borr. Rep. Vol. II. p. 656. Morley's Digest, Vol. I. p. 24.

Case bearing on the vyavastha No. 656.

Q. 2. If a dispute arise between an adopted son and his adopting mother, and, to decide it, the adopted son execute an agreement of the following purport, that his mother is to remain in possession of the landed property during her life-time, and that he is to inherit after her only on the following condition: that should any serious difference occur between his mother and himself, he is to lose all his rights, and his adoption to he held void; does such document, on the occurrence of any difference between them, confer a legal right on the mother to disinherit the adopted son.

R. 2. Under the circumstances stated, such agreement does confer the right alluded to on the mother, because the owner of any possessions may dispose of them as he pleases. This opinion is conformable to the Diya-bhîga, Vivâda-bhangârçava, Vivâdârârâsa-âsetu, and other tracts.

Authorities:—The text of Nârâda cited in the above authorities “Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth.”


MISCELLANEOUS CASES RESPECTING ADOPTION.

CASE NO. 33 OF 1856.

RANEE MUN-MOHEENEE, (RESPONDENT) PETITIONER VERSUS JOY-NARAIN BOSE, (APPELLANT) OPPOSITE PARTY.

In this case the application for review was rejected, inasmuch as the court saw no reason to doubt the correctness of its former rulings.*

In cases in which permissions to adopt are propounded, contemporaneity of execution and publication is the best test of the genuineness of the deed set up, and in the absence of this test all the circumstances bearing upon the alleged deed and all the probabilities for and against its genuineness, must be thoroughly considered.—Abstract of the decision in the above suit passed on the 21st of February 1837.

See S. D. A. D. for 1857, pages 244—246.

* See ante, pp. 891—898.
Roop-laul Mullick died in 1837, leaving a widow, since deceased, and four sons, Prawn-kishen Mullick, since deceased, Sree-kishen Mullick, deceased in 1851, and the defendants, Nobo-coomar Mullick and Shama-churn Mullick, Sree-kishen Mullick died intestate, leaving a widow Raj-coomaree Dossee. The issues raised by the pleadings in these suits were: first, whether or not Raj-coomaree Dossee was entitled to retain five company's papers,—aggregating Cos. Rs. 1,21,000 of which she had taken possession after her husband's death, and whether or not she was entitled to adopt a son by a verbal authority received from her husband before his death.

At the hearing it was objected that the court could not declare as to the power of adoption, it was decided that the plaintiff had established her title to the company's papers as her stree-dhun, and following is so much of the judgment of the court as related to the declaration of the right to adopt.

Colville, C. J. Before we express any opinion upon the effect of the evidence given on either side touching the power of adoption, which is alleged to have been given by Sree-kishen to his widow, it will be convenient to consider the question raised by Mr. Advocate General whether the court can declare the existence of such a power before an adoption, and in the absence of the party to be adopted.

The manner in which the question comes before us is this. On the 11th of January 1855 Nobo-coomar Mullick and Shama-churn Mullick filed their bill, alleging various acts of waste against the plaintiff as heiress with the limited interest of a Hindoo female and insisting on their right as presumptive heirs in reversion to have the property of her husband ascertained and secured. In her answer filed on the 16th of April 1855, she suggests that she is not merely heiress of her husband, but that she has an authority from him to adopt, which if exercised would of course defeat both her own interest and the contingent interest of the reversioners. Upon this and on the 16th day
of July 1855 the Mullicks amended their bill treating the pretence of authority as false and praying for a declaration that no such authority was given, and for an injunction to restrain her from making an adoption under colour of it. They, therefore, first called for the adjudication of the court upon the validity of the alleged authority, it was not until on the 22nd of December in the same year that Raj-coomaree Dossee filed her bill praying to have her right to adopt affirmed by a declaration of the court, her cross suit, however, in some way got precedence of the original suit and by an arrangement between the parties was first heard and the effect of this was some what to alter the order in which the evidence on the question has been taken.

It seems difficult to dispute the right to bring such a suit as that presented by the amended bill of the Mullicks. The adoption, if made, would throw a cloud over their title as reversioners; and if the widow were on a false suggestion of authority actually about to adopt, they would seem to have a right to prevent her from making that like any other transfer of the estate to their prejudice. Nor can we assume that such a suit though a decree in it might not bind the interest of a son adopted in defiance of it, would be unfructuous, because, we are not to assume that the widow would incur the penalties of a contempt by disobeying the injunction of this Court. It must be conceded however that both the prayer of Raj-koomaree Dossee's bill and the arguments addressed to us in favor of the court's power to make such an affirmative declaration, go further and imply that in all cases a bill will lie by the widow and heiress in possession against the reversionary heirs of her husband for the mere purpose of having her power to adopt (a power which she cannot be compelled to exercise) affirmed.

One argument which has been strongly pressed in support of this view is founded on the 29th Section of Act VI of 1854, but that enactment only removes the objection to the suit which consists in its seeking merely a declaration of right without a consequential relief. It leaves untouched the objection that may consist in the want of sufficient interest in the plaintiff to maintain such a suit, or in the absence of material parties interested in the question. There are certainly many objections to such a suit. The affirmance of the right in it, would be no conclusive affirmance of the right of the party, afterwards adopted even against the actual defendants in the suits,
still less against any other person who might thereafter become the
heir of the husband living at the time of the widow's death. Nor
would a declaration that the widow had no right to adopt, or the
dismissal of her bill, exclude the right of any person afterwards
adopted by her, the decree in either case would be res inter alios acta.
The widow is a mere donee of a power, the exercise of which would
defeat her own estate. As far as interest therefore is concerned her
interest is opposed to a duty, which seems generally to be considered
one of imperfect obligation. In a case reported in 3 Moor's Indian
appeals, 359, the Privy Council expressed a doubt whether the civil
courts in India have any jurisdiction to entertain a suit for the mere
declaration of a right to perform certain religious ceremonies. Mr.
Macpherson in the third edition of his work at p. 42, stated that
the courts have lately exercised such a jurisdiction.

In the latest case that bears upon the subject. Prawn-putty Konwur
versus Musst. Poorun Konwur, step-mother of Futteh Bahadoor, de
cided on the 6th of June last, it was held by the majority of the court
that a suit could not be maintained by a party in expectancy for a
declaration of his future right, and Mr. Trevor intimated his opinion
that a suit for the declaration of a future interest, and for an order
by way of injunction regarding that interest, if unaccompanied by any
statement of actual or threatened legal injury to that alleged interst,
will not lie. This, in fact, puts the law of the Sudder upon the same
footing as that on which this court acted in a case against one Unno-
pooma Dossee, wherein our decision has been recently confirmed by
the Privy Council. 'None of those authorities, however, touch directly
the case of a widow claiming a right to adopt. The most direct author-
ity on that point is case XIX at p. 199, of the 2nd Vol. of Sir
William Macnaghten's Principles and Precedents of Hindoo law. But
in that case it is to be observed that the objection to the power to
adopt was that the deceased had a natural son living; and that the
widow was litigating with that son, who was in actual possession as
heir, the right to introduce a co-heir to his detriment. The cases in
this court which have been referred to—that of Joy-moncee Dossee
versus Sibo-secondary Dossee; and the case of Luckey-narain Tha-
koor's widows mentioned in Sir Fr. Macnaghten's work at p. 168,
are very distinguishable from such a suit as that which is now under
consideration.
Persons may be unwilling to give their sons to be adopted, if the right to adopt be doubtfull. It has been said, too, on one side, and denied on the other (neither side producing either evidence or authority in support of their contention,) that a "dattaka" or son given would forfeit the right to inherit to his natural father even though he might not, for want of sufficient power, have been duly adopted into the other family. There may undoubtedly be cases in which a person whose adoption proves invalid may have forfeited his right to be regarded as a member of his natural family. In such a case some of the old texts speak of him as a slave entitled only to maintenance in the family into which he was imperfectly adopted. But one very learned person has assured me, that the impossibility of returning to his natural family depends not on the mere gift or even acceptance of a son, but on the degree in which the ceremonies of adoption have been performed, and that there is a difference in this respect between Brahmins and Sudras, a Brahmin being unable to return to his natural family if he has received the Brahmical thread in the other family, the Sudra, if not validly adopted, being able to return to his natural family at any time before his marriage in the other family.

It certainly seems to us, that upon inchoate adoption and the person to be adopted having been ascertained, a suit might be framed to which she, the widow, and if necessary, those who resisted her right to adopt, might be made parties, and in which the question whether she had such a right might, as incident to the administration of the estate, be conclusively tried. However that may be, we do not think we should safely exercise our discretionary power of making a declaratory decree, by making in this widow's suit a declaration which we think cannot be conclusive, and would unnecessarily afford a precedent for similar suits, we do not, however, think that this view ought, considering the mode in which this question was first raised in the other suit, to cause us to abstain from giving our opinion upon the evidence which has been taken. That suit asks for an injunction to restrain the widow from adopting a son, and we are therefore justified in stating why we think such an injunction ought not to be granted.

What we propose to do is to dismiss the bill of Shama-churn Mullick with costs, and in the other suit to declare the plaintiff's right to the Company's paper as her Stree-dhun. The decree is to be without prejudice to the rights of any person whom she may hereafter adopt.
as heir of her husband. It seems to be necessary to have some such reservation, since otherwise it might be inferred from the refusal of the court to make the second declaration that its opinion was against the right to adopt. It is perhaps superfluous to say so; but this remark equally applies to the declaration as to the Company's paper which, of course is not binding against any son who may hereafter be adopted. S. C. December 9th, 1856. Boulnois' Reports. Vol. I. p. 137.

Case No. 452 of 1850.

Gour-nauth Choudhree and others, (Plaintiffs,) Appellants versus Anno-poorna Choudhrain, (Defendant,) Respondent.

Held that it is a fair legal inference that no son can be adopted without permission of the husband under the Hindoo law, a Hindoo widow cannot, on the death of the first adopted child, adopt a second without special permission to do so.* The court set aside the alleged adoption in this case. The widow pleaded her right to hold during her own life time in succession to her deceased husband, the court amended the lower court's decision, and awarded possession to the widow for life. The 27th of April 1852. S. D. A. R. p. 332. Marginal Note.

Case No. 393 of 864.

Gobindo-soonderee Debia, (Plaintiff,) Appellant versus Juggodumsa Debia, Bama-soonduree Debia and others, (Defendants,) Respondents.

In this suit the claim to adopt was disallowed in the case of a Hindoo woman, who, so long as any male member of her husband's family was alive, took no steps to carry out her husband's permission to adopt, but who, so soon as the last male member died, and the property devolved on the last male member's widow, tried to obtain possession by the alleged dormant permission to adopt.—Abstract of the Report of the above suit decided on the 29th May 1865. See Sudder land's Weekly Reporter, Vol. III. p. 66.

* This opinion of the late Sudder Court does not appear to be consistent with the reasons (ante, p. 738) for which the Hindoo law ordains the adoption of a son, as well as those texts of that law which say: "reason and justice are more be regarded than mere texts," and which are universally respected. For it can by no means be the intention of that law which provides for every emergency, that a man who left property should suffer after death notwithstanding he could be relieved by the adoption of a son (See ante, p. 734.) Jagun-nadika's dictum taken in its qualified sense, as shown at page 761, seems therefore to be consistent with the intention of the law.
A suit to set aside the adoption of a second son must be made within 12 years from cause of action. The maxim—"ignorantia legis nil excusat" applies to questions of the Hindoo law of inheritance and adoption, as well as to other laws.

This is a suit brought by Radha-kishen Muha-patter the first adopted son of Juggo-bundoo Muha-patter, to recover the half of his father's estate which is now in the possession of the defendant Sree-kishen Muha-patter who is the second adopted son of Juggo-bundoo Muha-patter. The ground on which the claim is put forward is, that according to. Hindoo law Juggo-bundoo Muha-patter had no power to adopt a second son.

The principal Sudder Ameen of Cuttack has held that the plaintiff's suit is barred under the law of limitation, not having been preferred within twelve years of the date on which Juggo-bundoo Muha-patter died.

On appeal this fact is not questioned, but it is urged that the plaintiff was in ignorance of his rights under the Hindoo law until the point was decided by Justices Campbell and Shumbhoo-nath Pundit in the case of Sudda-nund Muha-patter, reported at page 205 of Hay's Reports for February 1863, and a fresh cause of action is claimed from the date on which plaintiff became acquainted with that decision.

Bahoo Onoocool Mookerjea, though he put forward this argument, almost admitted that it could be sustained, though he attempted to urge that there was a distinction between written statute law of the country and the doubtful Hindoo law which had to be gathered from numerous books and commentators. We cannot however admit any such distinction. The maxim "ignorantia legis nil excusat" applies to questions of the Hindoo law of inheritance and adoption, as well as to all other laws. The plaintiff's cause of action admittedly arose more than 12 years before this suit was preferred, and it consequently is barred by limitation, unless the plaintiff can bring himself within any of the exceptions in the law.
It is said that the act of adoption of the second son by the father was a fraud on the first son, and that the father's ignorance of the law can not excuse him any more than the son's ignorance can now excuse him. Section 9 Act XIV of 1859 does not allude to a state of things such as appears in this case. The plaintiff has not, by any fraud of the father of the son, been kept out of knowledge of his rights. There is no reason to suppose that the father acted in fraud at all. His act in adopting a second son was in perfect good faith, and it appears to have been then considered in the family a perfectly good and legal act. The first adopted son, whose interests were thereby directly injured, did not attempt to oppose the second adoption. So far from it, on the father's death in 1849, the plaintiff and defendant, the two adopted sons, jointly petitioned the Collector, stating that they had jointly entered into possession of their father's estate, and praying that a butwarra might be effected, this butwarra was completed in 1855. The plaintiff having for more than twelve years after the father's death acquiesced in the defendant's right to possess one half the property, his suit to disturb that possession can not now be entertained.

It is contended that, in the decision of February 1863, the learned judges refused to allow the plaintiff's admissions and ratifications to tell against his rights as having been made in ignorance of those rights. But that was not on the question of limitation. The plaintiff in that case was within twelve years from his cause of action. Here the plaintiff is not within that time. The lower court was right to dismiss the suit.

CHAPTER X.
EXCLUSION FROM INHERITANCE.

As a man would be drowned who attempted to pass deep water in a boat made of woven reeds, so does a father sink in the gloom of death, who leaves only contemptible sons.—Coleb. Dig. Vol. III. p. 298.

Consequently, he who is averse from performing constant and occasional rites, does not benefit his father: hence he is not capable of inheriting the paternal estate.—Ibid.

VRIHARPATI:—"Though born of a woman equal in class, one who is not virtuous (a) shall have no claim to the paternal estate; it is ordained to devolve on those learned priests (i) who offer the funeral cake to the deceased. A son redeems his father from debt to superior and inferior beings. Consequently, there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous?—Coleb. Dig. Vol. III. p. 301. See Coleb, Dá. biá. p. 102.

(a) "Not virtuous"—that is who has vices instead of virtues.—Dá. T. p. 20.

(i) "Learned priests"—are mentioned illustratively, the term comprehends any person who duly performs the obsequies and other constant and occasional rites.—Coleb. Dig. Vol. III. p. 302.

Wealth is conferred for the sake of defraying sacrifices: therefore, distribute it among honest persons for that purpose, but not among women, ignorant men, or such as neglect their duties (u.)—Ibid. p. 317.

(u) "One who neglects his duties;"—one who performs not the ceremonies enjoined at morning and evening twilight, and at noon, nor other daily acts of religion: a woman is disqualified for sacrificing,

---

* Exclusion from inheritance, with the Hindu, rests, in general, upon the same principle with succession to it, i.e. it is connected with the obsequies of the deceased from their incapacity to perform which the excluded are incompetent as heirs. The cause, of it are sufficiently numerous, defects both of body and mind, together with vice, constructive as well as actual, being attended with this effect; and lastly, devotion to any of the religious orders.—Strange's Hindu Law. Vol. I. p. 313.
because she is incapable of sacred knowledge. The legislator declares an ignorant man, and one who neglects his duties, incompetent to sacrifice.—Ibid. pp. 387, 318.

"Him, who neglects solemn rites, the ignorant man, one who is afflicted by grievous malady, and one who acts according to his mere pleasure, the wise have declared impure even until death."—Ibid.

Consequently by declaring them impure until their death, it is intimated that they are unfit for celebrating a sacrifice, for which purity is required.—Coleb. Dig. Vol. III. p. 318.

But Jnmáta-váhana reads 'akarma-karmisah,' those who practise what is inconsistent with duties, instead of 'akarminah,' those who neglect their duties. According to his opinion, persons addicted to gaming and the like are intended by that term.—Ibid.

A PASTAMBHA.—No doubt, all the sons who are virtuous take their shares, but him who illegally acquires wealth, even though he be the first born, let the king declare incapable of inheriting.—Ibid. p. 298.

Who, though first born, illegally dissipates wealth; such is the construction and sense: "illegally" by gaming or the like: "incapable of inheriting," capable of inheriting no more than the residue of a share, after deducting so much as has been dissipated by him. Some thus expound the text.—The Ratnákara, Ibid. pp. 298, 299.

Others explain the term "Prati-pádayati" by 'acquires,' or 'earns.' Consequently, he who follows an illegal mode of subsistence, through avidity for wealth, without the sanction of the law, shall be deprived of his share. "Following an irregular profession," in the text of Gotama, signifies subsisting by unlawful means.—Ibid.

A PASTAMBHA.—A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated; not a son who acts otherwise, be he conversant even with the whole Veda.—Coleb. Dá. bhá. p. 102.

"Since a son delivers his father from the hell called put, therefore, he is named 'put-tra' by the Self-Existent himself." By this and similar passages great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire?—Ibid.
The principles inculcated by the texts above cited, though not abrogated, or rendered obsolete, are not at present, for the most part, strictly observed and given effect to by the present courts of judicature, which generally follow in practice the Vyavasthas subjoined.*—

Vyavastha. 657. A person degraded (fallen) for sin, or an outcast (o) his issue (k,) a hypocrite or a person wearing the token of religious mendicity, one who has assumed another order (g,) an impotent person (j,) one born blind or deaf (t,) one lame (n,) a mad man (d,) an idiot (p,) one dumb a person afflicted with an incurable or obstinate and agonizing disease (b,) he who has lost the use of a limb (m,) an enemy to his father (y,) a person addicted to vice or expelled from society (r,) are excluded from inheritance.*

Authority. I. Impotent persons, outcasts (o,) persons born blind or deaf (t,) mad men (d,) idiots (p,) the dumb, and such as have lost the use of a limb (m,) are excluded from shares of the heritage.*—Manu.

II. An outcast and his issue (k,) an impotent person, one lame, a mad man, one afflicted with an incurable disease (b,) must be maintained; excluding them (however) from participation.*—Jânya-valkya.

* In regard to the causes of disinheretance, discussed in the Digest, B. V. Ch. 5. Sect. I, corresponding with the 5th Ch. of Nisâha-vâhana, and the 10th Sect. Ch. 2, of the Mitikshara, I am not aware, that any can be said to have been abrogated, or to be obsolete. At the same time, I do not think, any of our courts would go into proof of one of the brethren being addicted to vice, or profusion, or of being guilty of neglect of obsequies, and duty toward ancestors. But expulsion from caste, leprosy, and similar diseases, natural deformity from birth, neutral sex, unlawful birth resulting from an uncanonical marriage, would doubtlessly now exclude; and, I apprehend, it would be to be so adjudged in our Adawla. That the causes of disinheretance, most foreign to our ideas, are still operative, according to the notions of their law among the natives, I conclude from some cases that came before me, when I presided in Zillah Courts, I will mention but one, which occurred at Benares, at the suit of a nephew against his uncle, to exclude him from inheritoral property, on the ground of having neglected his grand-mother's obsequies. He defended himself, by pleading a pilgrimage to Gaya, where he alleged he had performed them. His plea, joined with assurances of his attending to his filial duty in this respect in future, was admitted; and the claim to disinherit him, disallowed."—Colesbrooke's Remarks. See Str. H. L. Vol. I. pp. 219, 220,
III. An enemy to his father (y), an outcast, an impotent person, and one who is addicted to vice or has been expelled from society (l), take no shares of the inheritance, even though they be legitimate; much less if they be sons of the wife by an appointed kinsman.*—Nárada.

IV. When the father (is dead, as well as in his life-time,†) an impotent man, a leper, a mad man, an idiot, a blind man, an outcast, the offspring of an outcast, a person wearing the token of religious mendicity (g), are not competent to share the heritage.*—Devala.

V. Those who have assumed another order (g) are excluded from participation.—Vāshishtha. Coleb. Dig. Vol. III. p. 327.

VI. All those brothers who are addicted to vice, lose their title to inheritance.*—Manu.

VII. Sankha and Likhita—"Of him who has been formally degraded (o), the right of inheritance, the funeral cake, and the libation of water, are extinct.—Coleb. Dig. Vol. III. p. 300.

(o) 'Degraded'—that is, excommunicated for a heinous crime, or for crimes in the second or third degree.†

Degradation takes place in the case of a heinous crime once consciously or twice unconsciously committed.‡

The heinous crimes are as follows:—"killing a Brāhmaṇa, drinking forbidden liquor (h), stealing (gold from a priest,) adultery with the wife of a father, natural or spiritual, and associating with such as commit those offences (a) wise legislators must declare to be crimes in the highest degree.—Manu. Ch. XI., v. 55.

A person is also degraded by once committing such a sin or crime as would cause his expulsion from caste.


(h.) Here, by drinking is meant the drinking of unconsecrated spiritual liquor; because the drinking of consecrated or purified liquor, which is considered a lawful act, does not cause degradation. Thus is declared in the Nirukta-tantra (Chapter V.) "Drinking unconsecrated spiritual liquor, a brāhmaṇa becomes guilty (of the sin) of killing a brāhmaṇa; but drinking the consecrated or purified liquor, a brāhmaṇa shines as the burning fire.—The text, prohibiting the drinking of spiritual liquor, purports the drinking of the cursed (that is, unconsecrated) liquor. In all the four yugas,* the spiritual liquor has been (considered) the purifier (of any one's person); it has become undrinkable only by reason of being cursed: consequently, it would be (again) drinkable on the curse being removed."

As to the text cited in the Tithi-tattva—"Spirituous liquor is unfit (prohibited) to be drunk, given, and received,"—its meaning is, as explained by Raghu-nandana himself, that "spirituous liquor, unless consecrated or offered to a deity, is unfit to be drunk and received."

"In (lawfully) tasting meat, in drinking fermented liquor, in caressing women, there is no turpitude; for, to such enjoyments men are naturally prone: but a virtuous abstinence from them produces a signal compensation" (Manu, Ch. V. v. 56.)—This text is also interpreted by Kālika-bhatta and the rest to intend unprohibited meat and so forth.

(a) 'Associating with such as commit those offences,—that is, associating with such a person, for a period of one year, as has committed the crimes in the highest degree; this is declared in the text subjoined: "He, who associates himself for one year with a fallen sinner, falls like him; not by sacrificing, reading the Veda, or contracting affinity with him, (since by those acts, he loses his class immediately,) but even by using the same carriage or seat, or by taking his food at the same board.'"—Manu, Ch. XI., v. 181.

The crimes nearly equal to those in the highest degree are as follows:

---

* 'Yuga'—an age. In the Hindu system of chronology there are four yugas, which succeed each other in eternal rotation, viz. the Satya yuga, comprising a period of one million, seven hundred and twenty eight thousand years, the Treta yuga, one million two hundred and ninety seven thousand years, the Dvapara yuga, eight hundred and sixty four thousand years, and the Kali yuga four hundred and thirty two thousand years.
"False boasting of a high tribe, malignant information before the king, of a criminal (who must suffer death,) and falsely accusing a spiritual preceptor, are crimes (in the second degree, and) nearly equal to killing a Brāhmaṇa.—Forgetting the texts of scripture, showing contempt of the Veda, giving false evidence (without a bad motive) killing a friend (without malice,) eating things prohibited, or, from their manifest impurity, unfit to be tasted, are six crimes nearly equally of drinking spirits. To appropriate a thing deposited (or lent for a time,) a human creature, a horse, precious metals, a field, a diamond or any other gem, is nearly to stealing the gold (of a Brāhmaṇa.)—Carnal commerce with sisters by the same mother, with little girls, with women of the lowest mixed class, or with the wives of a friend, and a son, the wise must consider as nearly equal to a violation of the paternal bed."—Manu, Ch. XI., v, 56—59.

These crimes, whether perpetrated consciously or unconsciously,—cause degradation generally by the commission (of any of them) more than once.—Vide Prāyashchittra-tattva and Prāyashchitta-viveka.

A sinner in the third degree is only excluded from participation in the case of repeated offences: (such) crimes are therefore mentioned in the plural number.—Coleb. Dig. Vol. III. p. 304.

The crimes in the third degree are as follows:—

"Slaying a bull or cow, sacrificing what ought not to be sacrificed, adultery, selling one's self, deserting a preceptor, a mother, a father, or a son, omitting to read the scripture, and neglect of the fires prescribed by the Dharma-shāstra;—The marriage of a younger brother before the elder, and that elder's omission to marry before the younger, giving a daughter to either of them, and officiating at their nuptial sacrifice;—Defiling a damsel, usury, want of perfect chastity in a student, selling a holy pool or garden, a wife, or a child;—Omitting the sacred investiture, abandoning a kinsman, teaching the Veda for hire, learning it from a hired teacher, selling commodities that ought not to be sold;—Working in mines of any sort, engaging in dykes, bridges, or other great mechanical works, spoiling medicinal plants (repeatedly,) subsisting by the harlotry of a wife, offering sacrifices and preparing charms to destroy (the innocent;)—Cutting down green trees for fire wood, performing holy rites with a selfish view merely,
and eating prohibited food (one without previous design;) Neglecting to keep up the consecrated fire, stealing any valuable thing besides gold, non-payment (of the three) debts, application to the books of a false religion, and excessive attention to music or dancing; —stealing grain, base metals, or cattle, familiarity (by the twice-born) with women who have drunk inebriating liquor, killing without malice a woman, a šádra, voishya, or a kshatriya, and denying a future state of rewards and punishments, are all crimes in the third degree, (but higher or lower according to circumstances.)—Manu, Ch. XI. v. 60—67.

Jagān-nātha, on the authority of Ṛaghu-nandana, holds only such degraded persons as have not performed penance or are averse from it to be really degraded for sin, and not entitled to inherit; thus: “One degraded for sin is he who has slain priests, or committed some other atrocious crime, and who has not performed penance, but (on the contrary) is averse from it; for Ṛaghu-nandana says: ‘aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate.’”—Coleb. Dig. Vol. III. p. 315.

Ṛaghu-nandana is also followed by Śrī-krishṇa Tarkālakāra, who says: “Here expiatory penance having been ordained for a person degraded for sin, even by the gift (at the expense) of his whole property, and so forth, the word (degraded) must be preceded by the adjectival phrase ‘averse from penance.’ degradation not preceded by (attended with) the inclination of performing the penance is the cause of forfeiture of the right (to inheritance.’)—Commentaries on the Dāya-bhāga, Sans. p. 25.

The above doctrine being, nevertheless, applicable to those degraded persons only for whom penance is ordained, the degradation not expiable by penance does always cause forfeiture of right.

Now, as the penance for a degradation which causes the loss of caste, cannot restore the same, though it removes or expiates the sin, such degradation must always cause the forfeiture of right;* because

---
* As, with us, there was the less and greater excommunication, so, of offences considered with reference to their occasioning exclusion from inheritance among the Hindus, they may also be regarded in a two-fold point of view. This we learn from a
a sin has two effects,—damnation to hell, excommunication from society,—one of which is, in this instance, removed by penance, but the (other, namely) excommunication from society, still subsists.—See Prāyashchitta-tattva.

(k) 'His issue'—that is, the son begotten (by an outcast) after his degradation. Although by the term 'outcast' or 'degraded,' his son also is intended; for he is degraded being procreated by an outcast, yet he (the son of an outcast) is separately mentioned, for the purpose of indicating the disherision of the others, (viz.) the sons of the impotent persons and the rest. It should not be alleged that the term 'degraded' comprehending also his son born after degradation, the expression 'his issue' is used for the purpose of including the son of an outcast born before his degradation, inasmuch as he also, being free from defect like the sons of the impotent and the rest, is justly entitled to inheritance.—The Dāya-bhāga and Śrī-krīṣhṇa's Commentary thereon. See Dā. bhā. Sans. p. 111.—Coleb. p. 104.

(k) "The issue of a degraded man;" issue born after the commision of the act, which is punished by degradation; for this agrees with the text of Viṣṇu.—Coleb. Dig. Vol. III. p. 315.

(g) 'A person wearing the token (of religious) mendicity is one who has become a religious wanderer or ascetic.—Coleb. Dā. bhā. p. 104.

case that was before the Sudder Dewanny Adawlut in 1814, in which the official Pandits, having been referred to, distinguished between "those which involve partial and temporary degradation; and those which are followed by loss of caste;"—observing that 'in the former state, that of partial degradation, the offence which occasions it is expiated, the impediment to succession is removed; but in the latter, where the degradation is complete, although the sinfulness of the offence may be removed by expiatory penance, yet the impediment to succession still remains; because a person finally excluded from his tribe must ever continue to be an outcast.' In the case alluded to, the party in question having been guilty of a series of profligate and abandoned conduct, having been shamefully addicted to spirituous liquors, having been in the habit of associating and eating with persons of the lowest description and most infamous character; having wantonly attacked and wounded several people at different times; having openly cohabited with a woman of the Mahomedan persuasion, and having set fire to the dwelling house of his adoptive mother, whom he had more than once attempted to destroy by other means; the Pandits declared that 'of all the offences proved to have been committed by Sheenoth, one only, namely, that of cohabiting with a Mahomedan woman, was of such a nature as to subject him to the penalty of expulsion from his tribe irrevocably.'—and of this opinion was the Court.—Colebrooke's Remarks. See Str. H. L. Vol. I. pp. 321—322.
"Lingi"—A hypocrite, an impostor.—D. T. p. 21.


(g) "Another order" than that of a householder (or married man.)—Ibid. p. 327.

(j) Impotence is of two kinds: the impotence of one who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exist. The last is described by Kátyá-yaṇa:—"He is called impotent whose urine froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices."—Coleb. Dig. Vol. III. pp. 320, 321.

(t) The term 'born' is connected in construction with the words 'blind' and 'deaf.'—Coleb. Dá. bhá. p. 108.

'Born blind and deaf.'—That is, by nature, not those who have become so from some adventitious cause: the meaning therefore is, those who are blind and deaf from the period of their birth.—W. Dá. kra. sang. p. 65.

In practice, the succession of one who becomes deaf in the course of his life, occurs even though the deafness be incurable: the same is also proper in a case of blindness. Consequently the term must be understood as signifying born blind, or born deaf. It is expressly declared by Nárada: "One afflicted with an obstinate or an agonising disease (i,) and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares (of their parents.)"—Coleb. Dig. Vol. III. pp. 303, & 319.

"Persons born blind."—By the mention of birth the legislator suggests the incurableness, not the origin of the blindness," (3 Dig. 319.) By this dictum it is indicated by Jagān-nátha that the person who becomes incurably blind in the course of his life, is also excluded from inheritance; and it is also intimated by analogy that the persons who become incurably deaf, and so forth, in the course of their lives, are also disherited.

* In the text of Devála, cited in the Dágā-laksmadi impotence is described to be of six kinds; all of which, how ever, being comprehended by the two kinds of impotence above mentioned, it is unnecessary here to give a detail of the same.
Of the two conflicting opinions of his, as above mentioned, the former is agreeable to practice, but the latter is according to the letter of the law.

"As one who becomes blind in the course of his life ought to share the heritage, so ought one who becomes impotent." (3 Dig. 320.) This dictum of Jagan-nātha must be construed to intend blind persons and so forth, who have become so in the course of their lives and are not past cure; for the disherison of the blind and the rest who are incurable having been already justly determined by himself, the dictum would be contradictory to his own decision, were it applicable to those who are in a different condition.

(d, n) Here 'lame' signifies lame from his birth; and the term 'mad' also implies mad from his birth, as that is expressly declared in Nārada's text above cited.

(n) One who cannot walk on either of his feet is lame.*—Coleb. Dā. bhā. p. 103.

It should here be remarked that the term 'lame' being contiguous to the word blind, must signify born lame. In like manner, 'persons deprived of the use of their hands' must signify such as are destitute of the use of both hands from the day of their birth.—Coleb. Dig. Vol. III. p. 322.

(d) 'A mad man'—in the text of Devala, signifies one insane from his birth; for, the import is the same with that of the text of Nārada.—Ibid. p. 315.

(p.) 'An idiot' is a person not susceptible of instruction.—One who is incapable of articulating sounds, is dumb.—Coleb. Dā. bhā. p. 103.

* He who cannot walk on either foot, says Jīmikā-vaśkama, is lame. According to his opinion, if one foot can be used in walking, there is no true lameness. He who cannot walk on both of his feet, say modern lawyers, is lame. According to their opinion, if both feet can be used in walking, then only there is no lameness; consequently a man is called lame even though he can move on one foot. The opinion of Jīmikā-vaśkama is alone correct; for in the text of Manu, the general failure of organs is not signified by the expression, 'such as have lost the use of a limb,' (literally, such as have not their organs.) were that the meaning, one who had only lost the use of his hands would be capable inheriting.—Coleb. Dig. Vol. III. p. 321.
Raghu-nandana explains 'idiot' as one who cannot support the performance of duties: others explain the term, void of understanding, or one whose intellectual faculties are imbecile.—Coleb. Dig. Vol. III., pp. 315, 321.

'An idiot,'—devoid of knowledge of himself and others.—Ibid. p. 319.

Vyavastha. 658. Persons afflicted with the above-mentioned maladies, other than those blind, deaf, lame, or mad from birth, are excluded only in the case of their maladies being incurable.

Reason. This being consistent with justice and reason, and they being included among the persons incurably diseased.

'Consistent with reason and justice'—because, it would be inconsistent with law and practice, if a person, afflicted with such a disease before his father's death, but cured after it, be disinherited although immediately after the cure of that disease or defect he be entitled to the performance of the duties of a son, and fully enabled to perform the same, inasmuch as, when he is restored to the right of offering the oblation of food and libation of water and performing the solemn rites, a fortiori is he entitled to inherit both according to law and practice.

Authority. Raghu-nandana also holds, that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the Veda. By parity of reasoning, he becomes competent to inherit property, as well as to perform religious ceremonies. It is not found in any other case that a son competent to perform obsequies and other acts of religion is not qualified to inherit.—Coleb. Dig. Vol. III. p. 305.

Jimáta-váhana also is of the same opinion. He says: 'Since a son delivers his father from the hell called 'put,' therefore he is named 'putra' by the Self-existent himself.—By this and similar passages great benefits are stated as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts.' (Coleb. Dá. bhá. p. 102.) It follows that he who performs the acts deserves reward is certainly entitled to the reward.
not entitled to inherit before the performance of the expiatory penance,* are seen to take the inheritance even without performing such penance.

In the text of Devāla, the word "elephantiasis" is illustrative of these morbid changes, for, in the texts which will be quoted, it is expressed by the general term 'disease' or 'malady.' Then a man afflicted by gonorrhoea or dysentery would be also disqualified. Gonorrhoea, dysentery and the rest, may also proceed from the pernicious effects of drugs; but if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree disability is admitted by the terms of the text of Nārada: ("One afflicted with an obstinate or an agonising disease," &c.)—Coleb. Dig. Vol. III. p. 314.

(b) 'Afflicted with an incurable disease.'—This being heard (said,) if after partition, one be cured of his or her disease by the administration of medicine and so forth, then he or she also shall share the heritage.—Commentary on the Dāya-bhāga, Sans. p. 119.

(m) 'Such as have lost the use of an organ.'—This must not be taken to indicate the total failure of limbs or organs, as in that case it would be impossible for a person to live; nor must it mean the failure of one limb only, as in that case one is not deprived of an organ, and one who had only lost the use of one hand would be incapable of inheriting. Logicians do not acknowledge any essential property common to all organs and peculiar to them: hence, a general failure of them all cannot be affirmed by a single term; but the general failure of a particular one or more (not of all) is the meaning. That is, the total failure of (power to use) the hands or feet; the total failure of the sense of smelling or tasting; the deprivation of hearing, which constitutes deafness; the total failure of the generative organs (which is called) impotency; dumbness, or the total failure of speech, which depends upon the tongue; and so forth.†—See Coleb. Dig. Vol. III. pp. 321, 322.

* According to Rāghu-rāmdāna and others, men afflicted with elephantiasis, marasmus, honey-coloured gonorrhoea, black teeth, and other distempers difficulty cured, are incapable of inheritance so long as penance be unperformed.—Coleb. Dig. Vol. III. pp. 314, 315.

† By this law, privation of any one of these faculties excludes from inheritance, as does lameness, but it must be entire; that is, the individual must be so lame as not to be able to walk on either foot, and so, as to his hands, he must be deprived of the use of both.—Str. H. L. Vol. I. p. 215.
(y) 'An enemy to his father;'—he who hates his father is an enemy to his father: that is he who threatens or illtreats him during his life, and is averse from performing his obsequies when dead.—D. T. Sans. p. 20. See W. Dā. kra. Sang. p. 66.

He who hates his father is a professed enemy to him: enmity is manifested by attempting his life and so forth; but after the death of the father, by withholding the libations of water and the like, which should be offered for his sake.—Coleb. Dig. Vol. III, p. 303.

(r) 'Addicted to vice;' that is, addicted to forbidden acts, such as slaughter or the like, and reprehensible means of subsistence.—See Ibid, p. 299.

Kullāka Bhatta expounds "addicted to any vice," devoted to gaming or the like. Others explain it 'inclined to dissipate the wealth of the family.' Jimūta-vāhana interprets it 'averse from performing their father's obsequies, and other acts of religion.—Ibid. p. 300.

'Addicted to vice,' committing acts which exclude persons from performing the obsequies and other rites on the death of their ancestors;—that is, having carnal connection with such persons as are not to be so associated with.—Commentary on the Dāya-bhāga, p. 118. See W. Dā. kra. sang. p. 66.

(1) Jagannātha, instead of 'Oupa-pāṭika' (expelled from society) reads 'apa-pātrita' and thus expounds the term, 'A man formally expelled; one banished with the ceremony of kicking down a water pot, for a crime in the third degree, such as killing a Kshatriya without malice or the like.—See Coleb. Dig. Vol. III. p. 303.

The author of the Prakūsha, reading upa-pātaki (a sinner in the third degree,) instead of 'upa-pātrita,' explains it, guilty of crimes in the third degree.—See Ibid.

Jimūta-vāhana and Rughu-nandana read 'oupa-pātika;' that likewise signifies guilty of crimes in the third degree.—Ibid.

A sinner in the third degree is only excluded from participation, in the case of repeated offences; crimes are therefore mentioned in the plural number.—Ibid. p. 304.

There are different kinds of leprosy, the most vile of them is that with ulcers discharging matter or blood, as declared in the Bhabishya-purāṇa, and Vivāda-bhangārṇava. Thus:
VYAVASTHA-DARPANA.

Bhabishya-purāṇa:—“Hear, O priest! the enumeration of various sorts of leprosy, the last worse than the first: blisters on the feet, a deformity in the generative organs, cutaneous fissures, true elephantiasis, ulcers, coppery blotches, black and (eighthly) white leprosy.—Among these, that leper is most vile, in respect of all religious acts, who is afflicted with ulcers on all his limbs, especially on his temples, forehead, and nose.—When he dies, let his corpse be cast near a sacred river, or other holy place, or at the root of a sacred tree; let not a funeral cake or libation of water be offered, nor let his corpse be burnt, nor obsequies be celebrated.—Should a man through affection burn the corpse of a leper, who has been six or even three months infected with the disease, that man must perform the lunar penance of an anchoret.”—See Coleb. Dig. Vol. III. p. 309.

Vivāda-bhāgārava:—“Among those lepers of eight sorts, he who is incapacitated for all solemn rites is described (this word must be supplied) as afflicted with ulcers on all his limbs, or on his temples, forehead, and nose. Since this is merely illustrative, he who is infected with that foul leprosy which is attended with ulcers on any other part of the body, is abominated, and disqualified for all solemn rites. Or the term ‘on all his limbs,’ being employed by the same rule by which two names for kine are used at once in a general and particular sense, the meaning is, ‘on any part of the body, whether the temples and the rest, or parts different therefrom.’ Or else the meaning may be, ‘afflicted with ulcers on any one or more of all the parts of the body, or especially with those other ulcers called coppery, black, or white sores, on any one of the parts specified, namely, the temples and the rest: he who is afflicted with any one of these diseases is most abominated’”—See Coleb. Dig. Vol. III. pp. 309, 310.

“To reconcile the discordant opinions of many wise persons concerning the competence of the leper to inherit and to perform acts of religion, various modes have been exhibited, but, according to both opinions, a man infected with grievous leprosy is in effect capable of inheriting when he has performed penance: according to Rāghu-nandana and others, men afflicted with elephautiasis, marasmus, honey-colored gonorrhœa, black teeth, and other distempers difficultly cured, are incapable of inheritance so long as penance be unperformed.” (See Coleb. Dig. Vol. III. pp. 314, 315.) This reconciliation of Jagan-
VYAVASTHÁ-DARPANA: 1011

śātha’s is not, however, correct in every respect, inasmuch as no authority is of opinion that a leper with ulcers discharging blood or putrid matter becomes, after performing the expiatory penance, entitled to inheritance. On the contrary, even after the performance of the expiatory penance, he, owing to his remaining still impure on account of the ulcers, as well as not being admitted into society, is excluded from performing the shrāddha and other solemn rites, and taking the heritage—This is the unanimous opinion of all lawyers, and also consistent with reason, for, although by expiatory penance that effect of his sin, which caused him to be doomed to hell, be destroyed, yet the other effect of it, which caused him to be excommunicated from society, still subsisted. In practice too, a leper with ulcers discharging blood or putrid matter is never seen to perform the shrāddha and other solemn rites, and inherit patrimony.

Consequently, by the term “leper” is here meant the person afflicted with a light leprous unexpiated by penance, and one afflicted with leprosy discharging matter or blood whether expiated or not expiated by penance; because the sinful taint of the person afflicted with slight leprosy being removed by expiatory penance he has become entitled to perform the shrāddha and other rites, and as such he has a right to inherit. Now, although the sinful taint of a person afflicted with a leprosy discharging matter or blood be removed by expiatory penance, yet the other effect of his sin namely, that of excommunication from society, subsists, for which reason, as well as that of his always remaining impure on account of the ulcers, he is incompetent for the performance of the shrāddha and other rites. It follows then that he is not entitled to the heritage.

* Authorities:—PULASTYA: “On the occasion of the eclipses of the sun or moon, and offering of the ten funeral cakes (dasha-pinda) to the manes of the deceased (on the day before their first shrāddha) as well as in places of great sanctity, there is no impurity occasioned by ulcers.” The same, however, subsists on other occasions or in other places, thus DEVĀLA:—‘The persons with sores, those lying in child birth, those delivering women, drunkards, mad men, also menstruous women, and the persons whose relations are dead; and those impure, these eight are disallowed (to perform religious rites at those times.”)—Pradīpa-chitra-tattva.

“On there being a sore above the knee, one must not perform the constant (religious) rites; he or she must not perform also the casual rites, if there be bleeding even below it.”—A text cited in the Nirguṇa-sūdra.
Jagan-nátha, the author of the Viváda-bhangáravasa, says: "A person who is afflicted with elephantiasis, and who has not made expiatory, is excluded from inheritance; but one who has made atonement shall take a share, since the sinful taint is removed; for that was the sole cause of his exclusion. This is accurate; and in like manner, a person afflicted with marasmus is only excluded if he have not made expiation. Rághu-nandana holds, that expiation for a man afflicted with elephantiasis, or other similar disease, is ordained for the purpose of enabling him to perform acts of religion ordained in the Veda; by parity of reasoning, he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found, in any other case, that a son competent to perform obsequies and other acts of religion is not qualified to inherit."—(Coleb. Dig. Vol. III. p. 305.) This, however, is applicable to lepers other than those afflicted with ulcers discharging putrid matter or blood; inasmuch as one afflicted with such leprosy, being incompetent to perform the shráddha and other rites, notwithstanding his making the expiation, is at all times incompetent to inherit.

According to Rághu-nandana, they who have black teeth, and the like, as well as he who is afflicted with slight elephantiasis (should penance be unperformed,) can neither be burnt after their decease, nor succeed to property during their lives; for these also are sinners in the first degree; (and) "they," says the Brahma-puráṇa, "who have committed crimes in the first degree, are considered as degraded persons"—See Coleb. Dig. Vol. III. p. 312.

Vyavastha. 659. Save and except the outcast and his issue (a), all the persons excluded from inheritance, as above mentioned, are, however, entitled to food and raiment.*

(a) By the term 'his issue' is here meant the issue begotten by an outcast or degraded person when so circumstanced, for, being begotten by an outcast that child also is an outcast.

Authority. I. But it is just that the heir who knows his duty should give to all of them (i) food and raiment for life

without stint, according to the best of his power: he who gives them nothing, sinks assuredly to a region of punishment.—Manu.

(i) “To all of them,” namely, eunuchs and the rest, food and raiment must be given without stint as long as they live.—Coleb. Dig. Vol. III. p. 319.

The construction of the text—"but it is just that the heir who knows his duty should give to all of them," &c.—is this: ‘it is just to give all of them, namely, eunuchs and the rest, food and raiment for life.’ From the conclusion of the dictum: “sinks assuredly to a region of punishment,” it must be inferred, that he who does not willingly give food and raiment, shall be compelled to give it.—Vide, Coleb. Dig. Vol. III. p. 320.

II. An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, (as well as others similarly disqualified,) must be maintained; excluding them, however, from participation.—Jñāntavalkya*

III. Persons incapable of transacting business (u,) blind men, idiots, those who are immersed in vice (e), or afflicted by incurable diseases, and even those who neglect their duties (o,) (but not the degraded nor their issue,) let the heirs supply with food and apparel.—Boudhāyana.

(u) “Persons incapable of transacting business;” not become capable of civil transactions.—The Ratnākara. The terms may be also explained, neglecting civil affairs, and solely devoted to acts relative to another world.—Coleb. Dig., Vol. III. p. 317.

(e) “Those who are immersed in vice;” The term (Vāyasana) is explained by Amara, danger or calamity, falling low, or erring, vice proceeding from lust or wrath; consequently, the heir must support those who have fallen off from their duty, that is, who are addicted to gaming and the like; and such as are impelled by vice proceeding from lust, that is, addicted to the frequentation of courtesans; and those who are impelled by vice proceeding from wrath, or who always designs mischief to others; it follows from the maintenance ordained, that they shall be excluded from participation.—Ibid. p. 317.

(o) "Those who neglect their duties," that is, who are disqualified for acts of religion, such as sacrifice and the like; or, those who perform not the ceremonies enjoined at morning and evening twilight, and at noon, nor other daily acts of religion.—See Ibid.

IV. Although they be excluded from participation, they ought to be maintained, excepting, however, the outcast and his son. That is taught by Devala.—Coleb. Dá. bhá. p. 103. See ante, pp. 997,998.

Vyavastha'. 660. The sons (k) of the persons incapable of inheriting are, however, entitled to inheritance, provided they be free from the defects causing exclusion from inheritance.*

(k) Here by the term 'sons' is meant the unblemished given or legitimately begotten sons of eunuchs and the rest as the case may be, also the sons of an outcast procreated before his being degraded, because not being degraded he also is free from defect.

Authority. I. When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token (of religious mendicity.) are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance.—Devala, See Coleb. Dá. bhá. p. 103.

II. A professed enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled (by his kinsmen,) shall not inherit, though begotten by the deceased; much less if begotten on his wife by a kinsman legally appointed. One afflicted with an obstinate or agonising disease (g) and one insane, blind, or lame, from his birth, must be maintained by the family; but their sons may take the shares (of their parents.)—Nárada. See Coleb. Dig. Vol. III. p. 303.

(g) 'Obstinate diseases' are atrophy and the rest; 'agonising distempers' are leprosy and the like.—Coleb. Dig. Vol. III. p. 300, See W. Dá. Kra. Sang, p. 67.

VYAVASTHA’-DARPANA.

Here, by the expression ‘and the rest’ is meant the other diseases occasioned by sin or vice. See ante, pp. 105 et sequre.

A possibility exists of an impotent man, and the rest, as above enumerated, espousing wives. “If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue shall be capable of inheriting,” Issue signifies offspring.—It must not be objected how can they contract marriages, since the eunuch not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unapt for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a Shádra.—Therefore, the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they are free from similar defects, to take their allotments according to the pretensions of their fathers.—Coleb. Dá. bhá, pp. 106,107.

Vyavastha’. 661. The daughters, of the persons not entitled to inherit as above mentioned, must be supported so long as they be not given in marriage, and their childless wives are to be maintained for life, provided they remain chaste.*

Vyavastha’. 662. Hence adulterous women forfeit their right to maintenance, as well as inheritance.

Authority. 1. But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorised, may take shares, provided they have no disability (j).—Their daughters must be supported so long as they be not disposed of in marriage: and their childless wives who preserve chastity, must be supplied with food and apparel; but disloyal and traitorous wives (t) shall be banished from the habitation.—JÁNYA'VAKYA. See Coleb. Dig. Vol. III. p. 908—324.

On this text commentators remark, that two sons of lepers and the rest, namely, one legally begotten, and one produced by a wife duly authorised, but not their other sons, are capable of inheriting. That

is not satisfactory: for the issue of an appointed daughter, the son
given, and the rest, are faultless; and the offspring of the wife and
the son legally begotten, are not specially mentioned in the texts of
Manu and the rest. It should not be argued, that no ground of pre-
ference exists whether the text of Manu shall be restricted as bearing
the same import with the text of Jānyavalkya, or this be considered
as exhibiting instances which elucidate the meaning of the other, for
Manu is superior to all the legislators: Thus Vrihaspati:—"Manu
holds the first rank among legislators, because he has expressed in
his code the (whole) sense of the Veda: no code is approved which
contradicts the sense of (any law promulgated by) Manu."—Coleb. Dig.
Vol. III. pp. 322, 528.

(j) "Provided they have no disability;"—that is, provided they
are free from defects which cause exclusion from inheritance, such
as blindness, deafness and the like. "They may take shares;" not a
mere maintenance.—Coleb. Dig. vol. III. p. 324.

(t) "Traitorous wives:" this term, according to the Ratnakara,
positively denotes treason, such as the attempt to administer poison or
the like, not merely a contentious spirit. Consequently, the same
married wife, who ought to be banished from the habitation by her
husband, shall in like manner be expelled by his brothers and the
rest.—Coleb. Dig. Vol. III. 324.

II. The wife who is chaste, succeeds to her husband’s estate.—
Kātyāyana cited in the Mitaksharā.

III. The wife who does acts injurious (to her husband,) who has no
(sense of) shame, who destroys his effects, (or) who is addicted to adultery,
does not deserve property.—Kātyāyana cited in the Dāya-tattva.

Vyavastha. 663. It should, however, be observed that the
woman who is adulterous at the time when suc-
cession opened or who previously committed adultery which
remained unexpiated by penance, forfeits her right to inher-
tance and maintenance; and not she who was previously
adulterous, but ceased to be so and co-habited with her husband,
or expiated or was about to expiate the sin by penance be-
fore the time of succession; and not also she who became
adulterous after inheriting property or obtaining maintenance,
unless the crime were such as to cause complete degradation by loss of caste unredeemable by atonement. *

V y avastha. 664. In like manner, any of the above mentioned sinful diseases, defects or crimes that existed or remained unexpiated by penance, at the time when succession opened, causes exclusion, and not that which was already cured or expiated by penance, or which has had its existence at a subsequent period. †

Inasmuch as, heritable right devolves on, or vests in, the (preferable) heir at the moment of the owner’s death, and being once vested, it cannot be divested for any subsequent disease, defect, nay, even for a crime, unless it were such as to cause complete degradation by loss of caste. ‡

Because,

Vyavastha. 665. The person committing a crime or sin which causes degradation by loss of caste unredeemable by atonement, forfeits property whenever the same is committed, and cannot regain inheritability even by expiatory penance. †

For, the offence having two effects—damnation to hell, and total loss of caste,—although the sinfulness of the offence might be removed by ex-

* An unchaste woman is excluded from the inheritance of her husband. But no misconduct, other than incontinency, operates disinheritance; nor, after the property has vested by inheritance, does she forfeit it, unless for loss of caste, unexpiated by penance, or unredeemable by atonement.—Colebrooke’s Remarks cited in Strange’s Hindu law, Vol. II. p. 344.

† Where the exclusion from inheriting is not for natural defects, the cause must have arisen, previous to the division, or descent of the property; if it do not occur till after, the succession is not divested by it.—Str. H. L. Vol. I. pp. 223, 224

The disease that disables, (an obstinate, or an agonising one,) must be ascertained to be the sign of an atrocious crime, or it has not the effect of excluding, it being, not the disease, but the sin that is the cause of the disability; and hence it may be removed by penance, the impediment continuing to operate only so long penance remains unperformed. Thus restored, inheritability follows; there being said to be no case, in which a man competent to the one, is not qualified for the other. Of obstinate diseases, manasvina, or atrophy, is mentioned as an instance, of the agonising, leprosy; but it must be of the sanious, or ulcerous (the worst) kind; of which a text of the Bhaviṣṭha Purāṇa gives a disgusting description.—Str. H. L. Vol. I. p. 217.

‡ See the foot note at pages 1001 and 1002.
piATORY Penance, yet the impediment to succession still remains, because, the person finally excluded from his tribe must ever continue to be an outcast, and an outcast, whenever he becomes so, forfeits property. (See ante, pp. 1001, 1002.) But,

Vyavastha 666. A person degraded for a crime or sin without final exclusion from tribe does not forfeit property, if he has performed expiatory penance, or is about to do it.

For, Raghu-nandana and Sri-krishna, the paramount authorities of the Bengal school, hold that the fallen sinner forfeits his right when he has not done penance or is averse to doing it. See Dāya-tattva p. 3, Commentary on the Dāya-bhīga, Sans. p.3, and Coleb. Dig. Vol. III., p. 315.

Vyavastha 667. A son being in esse, the daughter does not share the inheritance, but, if unmarried, she is to have wealth sufficient for her marriage.

Because, the texts intimating that a quarter share should be given to the daughter, notwithstanding the existence of a son, are at present construed to mean that wealth sufficient for the nuptial expenses is to be given to the daughter, if unmarried.—See ante, pp. 457—459.

In practice too, a daughter’s succession is never seen while there is a son.

Vyavastha 668. The heritable right of the person who has given up the worldly concern becomes extinguished, just as that of the hermit and others quitting the condition of a householder.—See ante, p. 12.

* There are two occasions, upon either of which dominion may be transferred from the father in his life-time without his consent, whether the property, claimed by the sons to be divided, be ancestral or acquired. These are, voluntary devotion, by which the father is considered as having renounced it, and degradation from caste by which it is forfeited. Another undoubted one is his entry into religion; that is, his assumption of the one or other of two religious orders, by which a Hindu is accounted dead in law; the consequence also being the same, that is heirs take his estate. They constitute the third and fourth stages in the progressive advancement of the Hindu, from birth to death; the first being that of a student; the second that of a married man or householder; the third (the first of the two in question) viz. that of a hermit (Vānaprastha,) for which the appointed age is fifty; the next is that of Anchoret, (Vanaprast, or Yati,) that of the Anchoret was left at the beginning of the present (kaiś) age subsisting, when that of the Hermit is said to have been abrogated.—Str. H. L. Vol. I. pp. 113—115. Vide Macn, N. L. Vol. I p. 2.
Vyavastha. 669. To the property of an outcast his son born after degradation and the rest (t) are heirs, and not the son born before that event.

(t) Here by the term and "the rest" is meant his relations degraded like himself.

As, to the property of a hermit and the rest, their sons and others, born before their entering such states, are not heirs, so, to the property acquired by an outcast after his degradation, his sons and the rest, born before that event, have no heritable right. The successor to the property of a degraded man must therefore be ascertained like the successor to the property of a hermit and the rest,* according to the maxim—"the sense of the law, as ascertained in one instance, is applicable in others also, provided there be no impediment;" inasmuch as like the hermit and the rest, the outcast is considered civiliter mortuus, and deprived of right to property.

It is not proper to affirm, that his property in wealth acquired during his fallen state is forfeited by reason of his degradation. Else, a degraded sinner would be always compelled to rob for his subsistence.—Coleb. Dig. Vol. III. p. 315.

In ages other than the present (Kali,) marriages with damsels of unequal classes, and succession of the sons born of them, were allowed by law; thus the Dáya-bhága:—Marriage is allowed with women in the order of tribes, as well as with those of equal class; for Manu says, 'For the first marriage of the twice born classes, a woman of the same tribe is recommended; but for such, as are impelled by desire(n), those following are preferable in the order of the classes. A Shúdra woman only (d) must be the wife of a Srúdra; she and a woman of his own tribe (are the only wives) of a merchant; they two, and a woman of his own classes, are only eligible for a woman of the royal (or military) tribe; and those (three) and a woman of his own rank (may be wives) of a priest.'—Coleb. Dù. bhá. p. 142.

(d) A Shúdrá woman only.] The particle "only" is connected with every member of the sentence; for that term, expressed immediately before, is understood with the words 'she,' 'they two,' and 'those three.' The meaning is, that marriage in the inverse order of the tribes must by no means be contracted.—Ibid. p. 142.

* See ante, pp. 9, 10, 312 & 313. † Vide Coleb. Dù. bhá. p. 43, Note 81.
(n) But for such, as are impelled by desire, those &c.] Indicates an alleviation of offence, not entire exemption from blame. SANKHA and LIKHITA declare, "Wives must be espoused. Of like class are preferable to all persons." This is stated as principal rule. The succeedaneous one follows: 'Four wives, Brahma are allowed in the direct order; three, of a kshatriya of a Voishya; and one of a Shadra.'—The numbers here stated, &c., are intended to refer to the tribes.—Ibid.

These women are wedded wives. So POITHENAS shows: 'Wedded wives of a Brahma are allowed; and three, two, and the rest (p) respectively.

(p) Of the rest, ] Of the Kshatriya, &c., in their order three and one, may be allowed.—Ibid.

Though (such a marriage be) in the direct order of the class MANU and VISHNU have strongly censured the union of a man regenerate tribe with a Shadra woman.—Ibid. p. 142.

Accordingly, SANKHA omits Shadra in describing a wife eligible a twice born man. "A Brahma, a Kshatriya, and a Voishya, are pronounced as the allowed wives of a Bhama; a Kshatriya and a Voishya of a Kshatriya; but a Voishya is ordained the only wife of a Voishya and a Shadra of a Shadra.—Ibid p. 144.

MANU (then) propounds the distribution among sons of four classes. "Let the venerable son take three shares of the heritage; and the of the Kshatriya wife, two shares; the son of the Voishya wife, a share and a half; and the son of the Shadra wife may take a share. If a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this (following) rule: the venerable son receive four parts; the son of the Kshatriya, let the son of the Voishya have two parts; and let the son of the Shadra take a single part."—Ibid. p. 144.

Two modes (of partition) are propounded on the supposition of (superiority of) good qualities.—The son of a Brahma by a Kshatriya wife, if eldest of all by birth, and superior in virtue, shall be equal sharer with the Brahma son; and the son of a Brahma or Kshatriya by a Voishya wife shall, in like circumstances, be an participant with the Kshatriya son. So VRHASPATI directs:—son of a Kshatriya wife, being elder by birth, and endowed with su
or qualities, shall have an equal share with the venerable son of the 
Brāhmaṇī; and, in like manner, the son of a Voishyā wife shall share 
equally with the soldier.—Ibid. 145.

But land, which has been acquired by the father, through acceptance
(of a pious donation) shall belong to the son of the Brāhmaṇī exclu-
sively, not to the Kshatriya son and the rest; and the house and her-
ditary field appertain to the sons of regenerate classes, not to the
Shādra.—Ibid. p. 146.

**Vyavastha.** 670. But by the prohibition to marry, in the
present (kali) age, a damsel of a different tribe,*
the heritable right of the children born of such a woman is, by
analogy, disallowed; in consequence thereof, as well as of an
elder brother worthy of a superior portion being now rare,
the right of primogeniture is also abrogated.†

Now, therefore, it is useless to dwell upon the marriage with a
girl of a different tribe, and the heritable right of the children born
of her.

What is above laid down relates to the children of the women
married in the regular order.

**Vyavastha.** 671. But of the children born of the women
married in irregular order, the son of her who is
of the same tribe with the husband, has alone the heritable right.

If a man espouse a woman of superior tribe after marrying one of an
inferior class, both marriages are contrary to regular order. The son
of either of these women, being kshetraja or issue of the wife procreat-
ed by a kinsman authorised to raise up issue to the husband, is un-

* Undertaking sea voyages (to circumnavigate the ocean,) the marriage of twice
born men with damsels not of the same class, procreation of a son by a younger brother of
the (deceased) husband, slaughter of cattle in the entertainment of a guest, repast on
fleshment at funeral obsequies, and the order of a hermit, the act of again giving a younger
(married) woman in marriage, to (another) bridegroom, (a householder) continuing to be
the student of the Vedas for a very long time, the carrying of a water pot, (by a household-
er;) walking on a pilgrimage till the pilgrim die, the slaughter of a bull at a sacrifice,
the wise have declared that these practices must be avoided in the kali age.—See the
general note appended to Sir W. Jones' translation of Manu; and Coleb. Dig. Vol. III,
pp. 142, 142, 271, 272 & 268; also ante, pp. 14, 15.

† See ante, pp. 16, 17 & 457.
worthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation. That is declared by Kātyāyana: "But the son of a woman, married in irregular order, may be heir, provided he belong to the same tribe with his father: and so may the son of a man belonging to a different (but superior) tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe is not heir to estate. Food and raiment only are considered to be due to him by his kinsmen. But on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony.—Coleb. Dā. śhā. p. 105.

Vyavasthā. 672. But in the present (kali) age, the sons of women of a different class, whether married in the regular or irregular order not being considered as sons of the man by whom they were begotten, are not entitled to inherit.

Vyavasthā. 673. The sons born of those women who, though married according to the forms of the Veda do not become wives,* have no heritable right, they not being sons (in the eye of the law.)

"But the son of a Śādra, by a female slave or other unmarried Śādrā woman, may share equally with other sons, by consent of the father. Thus Manu says: 'A son begotten by a man of the servile class on his female slave or on the female slave of his slave, may take a share of the heritage, if permitted: thus is the law established. Without such consent, he shall take a half share; as Jáñyavalkya directs: 'Even a son begotten by a Śādra on a female slave may take a share by the choice of his father; but if the father be dead, the brethren should make him partaker of half a share.' Begotten on an unmarried woman, and having no brother, he may take the whole property: provided there be not a daughter's son. So Jáñyavalkya ordains: 'One who has no brothers may inherit the

whole property, for want of daughter's sons.* But if there be a
dughter's son, he shall share equally with him: for no special provi-
sion occurs, and it is fit that the allotment should be equal; since the
one, though born of an unmarried woman, is son of the owner; and
the other, though sprung from a married woman, is only his daughter's

The principle above quoted is not, however, generally followed in
practice in the present age. First, because, if the woman be of a
different class, her son has no right to the heritage, by the analogy
of the adoption of a dattaka son from a different tribe as well as the
marriage of a damsel with a man of a different class being prohibited,
and, in the eye of the law, such a woman, though married, not being
the wife* of the man to whom she was espoused, and the son born of
such a woman not being his son. Secondly, because female slaves
as described by law† being now rare, it is concluded that in the present
age there is no female slave's son. Thirdly, because a son begotten
by a man on a woman not married to him, is by custom held to be
a bastard. The above principle of the Dáya-bhága is, therefore,
applicable only to the low, and not to the good and high caste
Shástras of this country, whose conduct and religious acts are like those
of twice born men, and whose succession to heritage is also regulated
by custom like that of the twice born classes, and custom being the
transcendent law, as declared by Manu and the rest, must supersede
the general maxims of the law.‡

CASE No. 360 OF 1864.

Issur-chunder Sein and Lukkhee-monee Dossee (Defendants,)
Appellants, versus Ranee Dossee (Plaintiff,)
Respondent.

Case bearing on the vyavasthás N. 657.

The plaintiff who is the respondent before us, sued
to have an alleged will of her deceased husband, Nil-
comul Sein and an adoption which was made under
it, declared void and set aside, and also for possession of one moiety
of the said Nil-comul Sein's estate and to recover certain property of
her own.

* See the foot note of the last page.
† See ante, p. 360. ‡ See ante, pp. 314 et seq. 
And she alleged that she the plaintiff and Lakkhea-monee, as the two childless widows of Nil-comul, are entitled each to a moiety of his estate.

The defendants plead that the will is no forjery, but is the will of Nil-comul, that the adoption has been made in accordance with the provisions of the will; that Issur-chunder has possessed himself as he lawfully might, of the estate of Nil-comul, but of nothing which was the personal property of the plaintiff; and that the plaintiff is a leper and, as such, cannot, according to Hindoo law, inherit or be entitled in any way to claim to represent her husband’s estate or any portion of it.

As regards the first issue, whether the plaintiff is debarred from inheriting by reason of leprosy or other incurable disease, we concur in the finding of the lower Court. Persons, who under ordinary circumstances would undoubtedly inherit, are not to have their claim lightly set aside on the ground of disease; and in our opinion, no such person ought to be set aside or declared to be diseased within the meaning of the Hindoo law on this subject, except upon the clearest and most unquestionable evidence. In the present case, the evidence is of the weakest possible description. Of the particular disease which the defendants set up in their written statement, there is no reliable evidence. But it is said that, although the defendants have failed to prove leprosy, still, on the testimony of the native doctor whose evidence was deemed trustworthy and acted upon by the lower Court, the plaintiff has “atrophy,” of the bones, an incurable disease, which under Hindoo law is a cause of disinheritance. It is true that the native doctor referred to says that the plaintiff has had some affection which he calls “drying up (shooshko) of the bones,” for which he has treated her some six years or more; and he adds that, inasmuch as this disease has not yielded to his treatment, he considers it to be incurable. The defendants have, however, failed wholly to establish their plea which is that the plaintiff is a leper; and it would need far stronger evidence than the mere opinion of one native doctor to convince us that the plaintiff is labouring under some other disease of a different description—Not leprosy, but incurable and rendering her incapable of inheriting. On the whole, we fully agree with the lower court in thinking that it is not proved that the plaintiff is, on account either of leprosy or of any other disease, debarred from the right of inheritance.
We also agree with the lower Court in thinking that the will which has been set up is a forgery; and we in substance adopt, and concur in, the observations which the Court has made in this part of the case. We think the defendants have wholly failed to prove the will, and that it has rightly been set aside: and the adoption which is based exclusively upon it necessarily falls with it. The decree of the lower Court is, therefore, so far as it relates to the estate of the deceased, confirmed. The 26th of January 1865, Sudderland's Weekly Reporter, Vol. II. p. 125.

**Raj-koonwaryee Dossee (Plaintiff, Pauper) Appellant, versus Golabee Dosse (Defendant,) Respondent.**

**Case** bearing on the vyavastha Nos. 662, 663.

H. T. Raikes Esqr. Judge, and D. I. Money Esqr. officiating Judge.—The plaintiff, the first wife of Soo-dersun Sein, deceased, has brought this suit against the defendant, the second wife of the deceased, for possession of one half of the property left by the husband to which she alleges she is under the Hindoo law entitled.

The defendant claims the whole property on the ground that the plaintiff, during the life-time of her husband in November 1838, eloped with Loke-nauth Mullick. And that under the provisions of the Hindoo law, the plaintiff on account of her incontinence, which was fully proved, had forfeited her right of inheritance.

The question we have to determine embraces two points, one of fact and the other of law, first whether the alleged incontinence of the plaintiff is clearly established by the evidence so as to deprive her under the Hindoo law of her right to a participation in her husband’s estate, and secondly, whether, if we find this fact against the plaintiff the case can come under the provision of act XXI of 1850, so as to protect and preserve to her the right of inheritance, which under the Hindoo law on account of her misconduct she has forfeited.

The parties before us are the first and second wives of Soo-dersun Sein, who died in 1852. The evidence shows that in 1837 he became a lunatic and was shortly after confined in a lunatic Asylum, where he remained for more than a year; that during this interval one Loke-nauth Mullick carried on a criminal intrigue with the plaintiff and that
before her husband's return she left her husband's house and eloped with him; that Soo-dersun Sein subsequently brought an action for crimcon against Loke-nauth Mullick in the Supreme Court, and in 1839 obtained a verdict and damages to the amount of rupees 3,000; that he afterwards married the defendant and having entirely repudiated and set aside the plaintiff he never afterwards cohabited with her or recognised her as his wife up to the period of his death in 1852. It has been argued that the verdict obtained by the plaintiff's husband in the crimcon action in the Supreme Court against Loke-nauth Mullick is not *per se* sufficient evidence to establish the charge of incontinence now brought against her. We look upon it, however, as having an important bearing on the case and affording strong collateral proof, inasmuch as we gather from it that the evidence adduced upon the trial was sufficient to convince the Court that a criminal intimacy had existed between Loke-nauth Mullick and the plaintiff, and to induce it to award the husband large damages when moreover the verdict then given is confirmed by the evidence on the record. We think there is accumulative proof leaving no doubt upon our minds of the criminal conversation between the parties. It must we think have been of a notorious character to have induced the husband, a Hindoo, with all the strong prejudices and sensitiveness and reserve which Hinduos entertain upon the subject, to have brought such an action, the first that is recorded, in the Supreme Court, and to have published to the world his wife's incontinence.

It is further contended for the plaintiff that there is no express declaration or solemn act on the part of the husband from which the Court can infer that it was his intention to disinherit her. We think that the evidence on oath of Mr. W. Anley regarding the letter of the 10th April 1839, written by him to Mr. Neil, and which he declares he was instructed to write by Soo-dersun himself personally, offers sufficient indication, if no other was afforded of the husband's intention upon this point. But we have no doubt whatever from the whole evidence specially that of Sree-nauth Dutt when in connection with this letter we regard his conduct towards her throughout from first to last, that is from the first discovery of the criminal intrigue up to the time of his death his entire renunciation of her, his never cohabiting with her and never recognising her again as his wife, that it was his deliberate and fixed intention that she should not after his
death participate beneficially in his estate. All his acts, as well as the letter written by his instructions, bear out this intention; and he must have known as a Hindoo that he was only carrying out what the Hindoo Law itself in such a case prescribed. We are of opinion, therefore, that upon the first point the case is clearly against the plaintiff.

It remains for us to consider whether, notwithstanding we have found the fact of the plaintiff's incontinence clearly established by the evidence and that she is in consequence under the Hindoo law disentitled to a share of the estate of her deceased husband, her right of inheritance can be preserved to her under the provisions of Act XXI of 1850.

In considering this point, the opinion of Sir L. Peel in the case cited by the appellant's pleader coming from so high an authority is entitled to great weight. In the report of that case it is merely stated that Sir L. Peel observed. "that, by Act, XXI of 1850, it was provided that so much of any law or usage now in force in India as inflicted on any person forfeiture of rights of property, or might be held in any way to impair or affect any right of inheritance, by reason of his or her being deprived of caste, should cease to be enforced as law;" and he added: "further in this case the widow had been for some time in rightful possession, and the Court would be disinclined to disturb her in the absence of any decision of a Court of law, showing that such a person, for such reason, as above stated, might be expelled from possession." We cannot collect from so summary a report of the case upon what grounds this opinion of the operation of the Act was formed; nor does it appear to have been the principal ground upon which the decision was passed. With every respect therefore for that opinion and without the means of ascertaining whether the particulars of this case are the same as those upon which it was given, we must determine the point irrespectively, and with reference solely to the intent and meaning of the Act, as they may be fairly and reasonably gathered from the latter portion of it taken in connection with the preamble. Taking these together, we can put no other construction upon the Act than that contended for by the defendant's pleaders.

It was passed, as clearly shown in the preamble, for the purpose of extending the principle enumerated in Section IX Regulation VII of
1832, viz. that in civil suits, where the parties to them are of different religious persuasions, Mahomedan or Hindoo, "the laws of those religions shall not be permitted to operate to deprive such parties of any property, to which, but for the operation of such laws they would have been entitled." In the body of the Act, immediately following the preamble, and to be interpreted of course in connection with it, it is expressly declared that so much of any law or usage as inflicts on any person forfeiture of property, by reason of his or her renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law. Now it has been argued that inasmuch as under the Hindoo law a Hindoo widow forfeits her right to share in her husband's estate if she is proved to be guilty of incontinence, she is notwithstanding under the terms of this Act released from such penalty. Such an interpretation of the intent of the Act appears to us to be very strained. We are of opinion that the law can only be enforced in cases when a Hindoo widow has renounced the Hindoo religion and such renunciation is followed by loss of caste. We cannot suppose that it was ever intended or contemplated that when a Hindoo widow was proved to have been unfaithful to her husband's bed and he had by an express declaration put her aside, this Act should afford her a shelter under such circumstances and restore to her the right of inheritance which she had morally and legally forfeited.

Overruling, therefore, upon both points the pleas that have been urged in behalf of the plaintiff, we dismiss the appeal with costs.

Mr. A. Sconce.—I concur with my colleagues upon the issue of fact raised in this appeal, and I desire only to state shortly the opinion which I form upon the further question—whether, assuming the fact of adulterous intercourse to be established, the forfeiture of the right of succession to her husband's estate, which the plaintiff under the Hindoo Law has incurred, should cease to have legal effect by reason of the enactment of Act XXI of 1850. That a Hindoo husband might put away his wife for adultery or unchastity, and that the wife or (widow) thereby forfeited the right of inheritance or succession to her husband's estate which would have otherwise devolved on her, we have had no contest; but it is argued in adoption of the language of the Act quoted, that the forfeiture imposed by the Hindoo Law by reason of the widow being deprived of caste cannot now be enforced.
The title of Act XXI of 1850 declares its purpose to be the extension of the principle of Section 9 of Regulation VII of 1832 and in the preamble this principle is embodied, being to the effect that if one party to a suit should not be of the Hindoo (or Mahomedan) persuasion, the laws of the Hindoo religion shall not be suffered to deprive him of any property, to which but for the operation of such Laws, he would have been entitled. Accordingly in the body of the Act it is declared that any law which may impose a forfeiture of rights as a consequence of the renunciation of, or exclusion from, the communion of any religion, or of being deprived of caste shall cease to be enforced as Law. Here obviously the only words which can bring the present case within the meaning of Act XXI of 1850 are these—being deprived of caste, what then do these words import, what is the cause to which deprivation of caste is ascribed, or under what circumstances is the deprivation, in the act supposed to have arisen. It seems to me that the act itself intimates the limit within which its operation must be confined and that the circumstance above is contemplated in which the claim to a right of succession is opposed by reason of the claimant's having changed his religious persuasion keeping strictly however to the facts which in the present suit give occasion to the application of the Act, it is more pertinent to consider whether the admitted competency of a Hindoo to put away a wife for adultery and to deprive her of the right of succession to his estate is affected by the Act, I do not find in Hindoo Law a term equivalent to our word divorce, nor, I may add, does the Hindoo Law contemplate so complete a separation of the marriage tie as a dissolution of a marriage by the law of England through the form of divorce creates. Probably for example, the Hindoo law of separation does not place the woman in a position in which she shall be free to contract a second marriage. In this respect the law may be one sided favourable to the husband and unfavourable to the wife. But nevertheless it is indubitable that in the event of adultery by the wife being established, it is by law competent to the husband to put her away and that the forfeiture of her rights as wife is a legal consequence of her unchastity. If this operation of the law may not be accurately described by the word divorce it indicates a substantial substitute for that form of law and in itself constitutes a legal principle calculated effectively to regulate the relations of husband and wife married as Hindoos. Looking at the
issue under discussion in this light, I cannot suppose that it fell within
the contemplation of the legislature, by Act XXI of 1850 to make
any alteration in what, with the qualifications above expressed, I
may describe as the Hindoo law of divorce Act XXI of 1850 was
passed, as I take it wholly in the cause of religious toleration, and it
is impossible, as I think to divest its application to a purpose foreign
to that object. To suffer the Act to subvert another law to which it
contains no allusion, and least of all to suppose that the relaxation of
the bonds which tend to secure and elevate the relations of married
life was one of the direct purposes of the enactment. The 30th of
December 1258.—S. D. A. D. Vol. II. p. 1891.

CASE NO. 380 OF 1853.

Musst. Bal-govind and others (Defendants,) Appellants, versus
Laul-buhadour and others (Plaintiffs,)
Respondents.

This case was admitted to special appeal on the 29th
August 1853 under the following certificate recorded
by Messrs. J. R. Colvin and J. Dunbar.

The particulars of this case will be found detailed in the decision of
the Additional Judge of Sarun at pages 74 and 75 of the published
decisions of that Zillah for the month of March 1853.

The suit was instituted for possession and registration of names
in virtue of a purchase at a sale per decree of court.

The two principal defendants are Musst. Bal-govind and Musst. Teila-
soo. The former states that the share held by her, as guardian of her
three minor sons has been sold in December 1845. The latter con-
tends that during the lifetime of her husband, who is insane, the shares
of the children cannot be disposed of, and that indeed they have at
present no right at all.

In appeal the Additional Judge rejected certain objections put for-
ward, affecting the interests of Mohun Bhuggut, and he considered
that the opinion of the Principal Sudder, Ameen, that the rights and
interests of an insane person pass to his heirs, founded on extracts
from works on the Hindoo law of inheritance is correct, subject to this
restriction, viz. that the insane person is entitled during life to maintenance. We admit the special appeal to try whether the view of the law taken by the Additional Judge is correct and whether possession and registration in lieu of the son, Abilag, can be given during the life-time of his father on the doctrine that the estate of an insane person in Mithila passes so absolutely to his son, as to become his estate, and liable to be transferred for his debts, subject only to the condition of maintenance of the insane father.

JUDGMENT.

After perusing and considering the extracts from works on the Hindoo law of inheritance, filed with record and relied upon in this case by the Principal Sudder Ameer and the Judge, we find that the interpretation put upon them by the lower courts is erroneous, those extracts refer to the impossibility of a person succeeding to the inheritance of property who is afflicted by idiocy, insanity, &c.; but they nowhere prescribe that a person having once succeeded and subsequently becoming disqualified from the causes alluded to, shall be dispossessed of his property in consequence. We are, therefore, of opinion that the Judge is wrong in holding that the share of Abilag in his father's property had past to him, burthened only with a maintenance for his insane father during his life-time, and therefore the purchase of the property as Abilag's cannot stand, and we reverse that part of the Judge's decision with costs for the special Appellant, which affects that portion of the estate belonging to Ram-suhae.—The 18th of May 1834. S. D. A. D. p. 244.
CHAPTER XI.
ON THE CASTES OF THE HINDOOS.

PRIMITIVE Castes. Originally there were four castes:—the Brāhmaṇa, Kshatriya or Khaṭriya, Voishya and Shudra. The first three of these are called dwiṣati or dwija (twice born,) they being considered as born again by initiation in the rite of upa-nāyana (investiture with the sacred thread.)

MIXED Castes. In ages other than the present (kali,) intermarriages having been allowed by law,+ and followed in practice, amongst the four primitive or pure castes, there became several mixed (sankara) castes.‡

The sons by women one degree lower than their husbands are named in order the Mūrdhābhishiktta, Māhishya and Karana or Kāyastha.§ They are respectively begotten by a Brāhmaṇa on a wife of the Khaṭriya caste, by a Kshatriya on a Voishya wife, and by a Voishya on a Shudra wife.¶

The sons of women married in the inverse order, or two or three degrees lower are as follows:—"From a Brāhmaṇa, on a wife of the Voishya class, is born a son called Ambashtha, or Voidya, on a Shudra wife, a Nishida, named also Pārasava: From a Kshatriya, on a wife

* The three twice born classes are the sacerdotal, the military and the commercial; but the fourth, or servile, is once born, that is, has no second birth from the Gāyatri, and wears no thread. nor is there a fifth pure class.—MANU, Ch. X. v. 9.
† See ante, p. 1019 et seqv.
‡ In all classes they, and they only, who are born, in a direct order, of wives equal in class and virgins at the time of marriage, are to be considered as the same in class (with their fathers:)—Sons, begotten by twice born men, on women of the class next immediately below them, wise legislators call similar, (not the same,) in class (with their parents,) because they are degraded, (to a middle rank between both,) by the lowness of their mothers.—MANU, Ch. X. v. 5,6.
§ The Karana, though explained by some Commentators to be the Kāyastha tribe, is not the Uttara-rāṣṭrīya or Dukkhin-rāṣṭrīya Kāyastha common in this part of Bengal. The latter is one, and the best, of the pure Shudra tribes, and the profession of the persons of this tribe is to read and write; whereas the persons of the Karana caste are of a mixed race, as is manifest from the above text; they are to be found in the eastern part of Bengal, and are called Shudra Kāyasthas, who employ themselves as menial servants. Vide Rādhā-kṛṣṇa's Shāhada-kalpa-drūma Vol. i. pp. 542—549, and its Appendix pp. 467—468; also the Shudra dharma-tattva by Kamalakara Bhatta and Āchāra-nirnaya-tantra.
¶ Vide Kulika Bhatta's Commentary on MANU, Ch. X, v. 6.
of the \textit{Shakra} class, springs a creature, called \textit{Ugra}, with a nature partly warlike and partly servile, fierce in his manner, cruel in his acts.—The sons of a \textit{Bráhman} by women of three lower classes, of a \textit{Kshatriya} by women of two, and of a \textit{Vrishya} by one lower class, are called \textit{Apaśada}, or degraded below their fathers.—From a \textit{Kshatriya} by a \textit{Bráhmi} wife, springs a \textit{Sála} by birth; from a \textit{Vrishya}, by a military or sacerdotal wife, spring a \textit{Mágadha} and \textit{Voideha}. From a \textit{Shakra}, on women of the commercial, military, and priestly classes, are born sons of mixed breed, called \textit{Ayogava}, \textit{Kshatri} or \textit{Chkatri}, and \textit{Chandála}, the lowest of mortals.”—\textit{Manu}, Ch. X., vs. 8—12.

There are also compound mixed classes, who are begotten by men of the mixed or unmixed classes, on women of the mixed classes. They, and the different kinds of \textit{Vrátyás} or men not initiated in the ceremonies of assuming the sacred thread, are as follows:

“From a \textit{Bráhman}, by a girl of the \textit{Ugra} tribe, is born an \textit{Ārıta}; by one of the \textit{Ambashthha} tribe, an \textit{Ābhira}; by one of \textit{Ayogava} tribe, a \textit{Dhigyana}. The \textit{Ayogava}, the \textit{kshatri}, and the \textit{Chandála}, the lowest of men, spring from a \textit{Shakra} in inverse order of the classes, and are, (therefore,) all three excluded (from the performance of obsequies to their ancestors);—From a \textit{Vrishya} the \textit{Mágadha} and \textit{Voideha}, from a \textit{Kshatriya} the \textit{Sála} only, are born in an inverse order; and they are three other sons excluded (from funeral rites to their fathers.) The son of a \textit{Nisháda}, by a woman of the \textit{Shakra} class, is by tribe a \textit{Pukkasa}; but the son of a \textit{Shakra} by a \textit{Nishádi} woman, is named \textit{Kukkutaka}. One born of a \textit{Kshatri} by an \textit{Ugra} is called \textit{Swapáka}; and one, begotten by a \textit{Voideha} on an \textit{Ambashthhi} wife, is called \textit{Vena}. Those whom the twice born beget on women of equal classes, but who perform not the proper ceremonies of assuming the thread and the like, people denominate \textit{Vrátyás}, or excluded from the \textit{Gáyatriti}. From such an outcast \textit{Bráhmen} springs a son of a sinful nature, (who is different countries) is named a \textit{Bharjakantaka}, an \textit{Avantiya}, a \textit{Vádakha}, a \textit{Pushpadha}, and a \textit{Shoikha}. From such an outcast \textit{Kshatriya} come sons called a \textit{Jhala}, a \textit{Malla}, a \textit{Nîchchhíva}, a \textit{Nata}, a \textit{Karana}, a \textit{Khasa} and a \textit{Dravira}. From such an outcast \textit{Vrishya} are born sons called \textit{Suddhavan}, \textit{Chárya}, \textit{Kárusha}, \textit{Vijanan}, and \textit{Móitra}, and \textit{Sávata}. By intermixtures of the classes, by their marriages with women who ought not to be married, and by their omission of prescribed duties, impure classes have been formed.”—\textit{Manu} Ch. X., vs. 15—24.
(n) But for such, as are impelled by desire, those &c.] This indicates an alleviation of offence, not entire exemption from blame. So Sanka and Likhita declare, “Wives must be espoused. Women of like class are preferable to all persons.” This is stated as the principal rule. The succedaneous one follows: ‘Four wives of a Bráhmaṇa are allowed in the direct order; three, of a Kṣatriya; two, of a Voisyā; and one of a Shúdra.’—The numbers here stated, ‘four’ &c., are intended to refer to the tribes.—Ibid.

These women are wedded wives. So Poithnasaś shows: “Four wedded wives of a Bráhmaṇa are allowed; and three, two, and one, of the rest (p) respectively.

(p) Of the rest.] Of the Kṣatriya, &c., in their order three, two, and one, may be allowed.—Ibid.

Though (such a marriage be) in the direct order of the classes, Manu and Vishnu have strongly censured the union of a man of a regenerate tribe with a Shúdra woman.—Ibid. p. 142.

Accordingly, Sanka omits Shúdra in describing a wife eligible for a twice born man. “A Bráhmaṇi, a Kṣatriyā, and a Voisyā, are propounded as the allowed wives of a Bhámana: a Kṣatriyā and a Voisyā, of a Kṣatriya; but a Voisyā is ordained the only wife of a Voisyā; and a Shúdra of a Shúdra.—Ibid p. 144.

Manu (then) propounds the distribution among sons of four classes, “Let the venerable son take three shares of the heritage; and the son of the Kṣatriyā wife, two shares; the son of the Voisyā wife, a share and a half; and the son of the Shúdra wife may take a share. Or let a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this (following) rule: let the venerable son receive four parts; the son of the Kṣatriyā, three; let the son of the Voisyā have two parts; and let the son of the Shúdra take a single part.”—Ibid. p. 144.

Two modes (of partition) are propounded on the supposition of some (superiority of) good qualities.—The son of a Bráhmaṇa by a Kṣatriyā wife, if eldest of all by birth, and superior in virtue, shall be an equal sharer with the Bráhmaṇa son: and the son of a Bráhmaṇa or of a Kṣatriya by a Voisyā wife shall, in like circumstances, be an equal participator with the Kṣatriya son. So Vrihaspati directs:—‘The son of a Kṣatriya wife, being elder by birth, and endowed with superi—
or qualities, shall have an equal share with the venerable son of the Brāhmaṇī; and, in like manner, the son of a Voishyā wife shall share equally with the soldier.'—Ibid. 145.

But land, which has been acquired by the father, through acceptance (of a pious donation) shall belong to the son of the Brāhmaṇī exclusively, not to the Kṣatriya son and the rest; and the house and hereditary field appertain to the sons of regenerate classes, not to the Shādra.—Ibid. p. 146.

Vyavastha. 670. But by the prohibition to marry, in the present (kali) age, a damsel of a different tribe,* the heritable right of the children born of such a woman is, by analogy, disallowed; in consequence thereof, as well as of an elder brother worthy of a superior portion being now rare, the right of primogeniture is also abrogated.†

Now, therefore, it is useless to dwell upon the marriage with a girl of a different tribe, and the heritable right of the children born of her.

What is above laid down relates to the children of the women married in the regular order.

Vyavastha. 671. But of the children born of the women married in irregular order, the son of her who is of the same tribe with the husband, has alone the heritable right.

If a man espouse a woman of superior tribe after marrying one of an inferior class, both marriages are contrary to regular order. The son of either of these women, being kṣetraṇa or issue of the wife procreated by a kinsman authorized to raise up issue to the husband, is un-

---

* Undertaking sea voyages (to circumnavigate the ocean,) the marriage of twice born men with damsels not of the same class, procreation of a son by a younger brother of the (deceased) husband, slaughter of cattle in the entertainment of a guest, repast on flesh meat at funeral obsequies, and the order of a hermit, the act of again giving a younger (married) woman in marriage, to (another) bridegroom, (a household) continuing to be the student of the Vedas for a very long time, the carrying of a water pot, (by a householder:) walking on a pilgrimage till the pilgrim dies, the slaughter of a bull at a sacrifice, the wise have declared that these practices must be avoided in the kali age.—See the general note appended to Sir W. Jones' translation of Manu; and Coleb. Dig. Vol. III, pp. 141, 142, 271, 272 & 288; also ante, pp. 14, 15.

† See ante, pp. 16, 17 & 457.
(n) But for such, as are impelled by desire, those &c.] This indicates an alleviation of offence, not entire exemption from blame. So SANKHA and LIKHITA declare, "Wives must be espoused. Women of like class are preferable to all persons." This is stated as the principal rule. The succeedaneous one follows: 'Four wives of a Bráhmana are allowed in the direct order; three, of a kshatriya; two, of a Voishya; and one of a Shádra.'—The numbers here stated, 'four' &c., are intended to refer to the tribes.—Ibid.

These women are wedded wives. So POITHIÑASÝ shows: "Four wedded wives of a Bráhmana are allowed; and three, two, and one, of the rest (p) respectively.

(p) Of the rest.] Of the Kshatriya, &c., in their order three, two, and one, may be allowed.—Ibid.

Though (such a marriage be) in the direct order of the classes, MANU and VISNU have strongly censured the union of a man of a regenerate tribe with a Shádra woman.—Ibid. p. 142.

Accordingly, SANKHA omits Shádra in describing a wife eligible for a twice born man. "A Bráhmani, a Kshatriyá, and a Voishyá, are propounded as the allowed wives of a Bhámana; a Kshatriyá and a Voishyá, of a Kshatriyá; but a Voishyá is ordained the only wife of a Voishyá; and a Shádra of a Shádra.—Ibid p. 144.

MANU (then) propounds the distribution among sons of four classes, "Let the venerable son take three shares of the heritage; and the son of the Kshatriyá wife, two shares; the son of the Voishyá wife, a share and a half; and the son of the Shádra wife may take a share. Or let a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this (following) rule: let the venerable son receive four parts; the son of the Kshatriyá, three; let the son of the Voishyá have two parts; and let the son of the Shádra take a single part."—Ibid. p. 144.

Two modes (of partition) are propounded on the supposition of some (superiority of) good qualities.—The son of a Bráhmana by a Kshatriyá wife, if eldest of all by birth, and superior in virtue, shall be an equal sharer with the Bráhmana son: and the son of a Bráhmana or of a Kshatriya by a Voishyá wife shall, in like circumstances, be an equal participator with the Kshatriya son. So VRIHASPATI directs:—'The son of a Kshatriyá wife, being elder by birth, and endowed with superi-
or qualities, shall have an equal share with the venerable son of the
Brâhmani; and, in like manner, the son of a Voishyá wife shall share
equally with the soldier.'—Ibid. 145.

But land, which has been acquired by the father, through acceptance
(of a pious donation) shall belong to the son of the Brâhmani exclu-
sively, not to the Kshatriya son and the rest; and the house and heredi-
tary field appertain to the sons of regenerate classes, not to the
Shádra.—Ibid. p. 146.

Vyavastha. 670. But by the prohibition to marry, in the
present (kali) age, a damsel of a different tribe, the heritable right of the children born of such a woman is, by
analogy, disallowed; in consequence thereof, as well as of an elder brother worthy of a superior portion being now rare, the right of primogeniture is also abrogated.†

Now, therefore, it is useless to dwell upon the marriage with a
girl of a different tribe, and the heritable right of the children born of her.

What is above laid down relates to the children of the women
married in the regular order.

Vyavastha. 671. But of the children born of the women
married in irregular order, the son of her who is
of the same tribe with the husband, has alone the heritable right.

If a man espouse a woman of superior tribe after marrying one of an
inferior class, both marriages are contrary to regular order. The son of either of these women, being kshetraja or issue of the wife procrea-
ted by a kinsman authorised to raise up issue to the husband, is un-

* Undertaking sea voyages (to circumnavigate the ocean,) the marriage of twice
born men with damsels not of the same class, procreation of a son by a younger brother of the (deceased) husband, slaughter of cattle in the entertainment of a guest, repast on fleshment at funeral obsequies, and the order of a hermit, the act of again giving a younger ('married') woman in marriage, to (another) bridegroom, (a householder) continuing to be the student of the Vedas for a very long time, the carrying of a water pot, (by a household-
er;) walking on a pilgrimage till the pilgrim die, the slaughter of a bull at a sacrifice,
the wise have declared that these practices must be avoided in the kali age.—See the
general note appended to Sir W. Jones' translation of Manu; and Coleb. Dig. Vol. III,
pp. 141, 142, 271, 272 & 288; also ante, pp. 14, 15.

† See ante, pp. 16, 17 & 457.
Caste or Class.

Káoré . . . . . . . Keeping and selling swine.
Dom . . . . . . . Making and selling bamboo baskets, &c.
Murdó-farásh . . . . . Preparing funeral piles, carrying or dealing with dead bodies.
Muchi, Charma-kár, or Ruhidás . . Skinning dead and slaughtered animals, tanning, selling hides, leather, &c.; playing on the dhol, dhák*, &c.; weaving cloths.

Vyavasthā. 674. Each of the castes or classes above mentioned is at present a separate or distinct tribe. Intermarriages, between any two of these castes or classes, being abrogated or not being in practice, it must be concluded that the marriage between any two of them, if contracted, is null and void, and the issue of such marriage not entitled to inheritance, the same being considered as unlawfully born.

* The drum of the largest kind, carried by the left arm and shoulder, and played only on one side
ADDENDA.

ABSTRACT OF THE LAW OF INHERITANCE, &c, AS CURRENT
IN THE SCHOOLS OTHER THAN TAHT
OF BENGAL.

CAUSE OF The inchoate right arising from birth, and the
HERITABLE RIGHT. relinquishment by the occupant (whether effected
by death or otherwise) conjointly create the heritable right, the incho-
ate right which previously existed becoming perfect by the owner’s
death (natural or civil) or his voluntary abandonment.*

ORDER OF When a person’s right of property ceases by death,
succession. by degradation, by the quitting of the condition of a
householder, or by voluntary abandonment, the property devolves on
the son; in default of the son, the grandson, and failing him, the great
grandson, takes the inheritance; the grandson, whose father is dead
and the great grandson, whose father and grandfather are dead, inherit
simultaneously with the (late proprietor’s) surviving son: such grand-
sons and great grandsons, however, inherit per stirpes and not per
capita. In the case of the property having been already divided, the
widow succeeds† in default of the great grandson: she cannot, however,
dispose of the smallest part by gift, sale or the like, except for purposes
indispensably necessary, and certain other objects or purposes allowed
by law; it follows then that she can be considered in no other light than
as a holder in trust for certain uses; so much so, that should she
make waste, they who have the reversionary interest have clearly a
right to restrain her from so doing.‡ In default of the widow, the

† According to the doctrine of the Svarit-chandrika, which is of great and par-
amount authority in the South of India, a widow, being the mother of daughters, takes
her husband’s property, both movable and immovable, where the family is divided; but
a childless widow takes only the movable property. Where there are two widows, one
the mother of daughters, and the other childless, the former alone takes the immovable
estate, and the movable property is equally divided between them.
‡ The property inherited by a woman is etymologically described in the Mitaksara
to be a woman’s property or Strīdharma, and it being so, she according to this authority
might be said to be at liberty to make any disposition thereof; and the property would
devolve on the heir of her proper Strī-dhana; but it appears from the author’s own writing
that with respect to such property the woman is under the control of her husband’s heirs;
consequently it may be fairly concluded that according to the Mitaksara also such
property should devolve on the heir of her husband, and not on the successor to her
daughter succeeds; if there be an unmarried daughter, then, according to the law of Benares, she would take the inheritance to the exclusion of other daughters; failing her, the succession devolves on the married daughter who is indigent; in her default, the wealthy daughter succeeds: but no preference is given to the daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow. According to the Mithila law also, the unmarried daughter succeeds first; failing her, the married daughters are, without distinction, entitled to the inheritance; the daughter who is married, and has, or is likely to have, male issue, is not preferred to one who is widowed and barren; nor is there any distinction made between indigence and wealth. In default of the daughter, the daughter’s son inherits:* if there be many daughters’ sons, they inherit per capita, and not per stirpes. The Mithila authorities hold that the daughter’s son should succeed after (that is, on failure of) the king, and thereby determine, though indirectly, that the daughter’s son should never succeed. Failing the daughter’s son, the mother,* in her default, the father succeeds. The father, however, would succeed immediately after the great grandson in the case of the estate being joint and held in coparcenary (excluding the widow and the rest.) In default of him, the brother of the whole blood succeeds, in his default the brother of the half blood; then their sons inherit successively; next the paternal grandmother,* then the paternal grandfather, the paternal uncle of the whole blood, of the half blood, and their sons successively succeed; next the paternal great grandmother*, the paternal great grandfather, his son and grandson successively; then the paternal great grandfather’s mother,* his father, his brother, his brother’s son, successively succeed. In default of all these, the sapindas in the proper stri-ahana. And the Vīra-mārudega, which also is a great authority in Benares, has clearly laid down that, after her death, the heir of her husband is the successor to the property inherited by her from him. The courts of justice too, have all along treated this property not as stri-ahana, but as ordinarily inherited property. Thus their exists no apprehension of its becoming a woman’s peculium.

* The daughter, mother, grandmother, great grandmother, and great great-grandmother too, are, like the widow, restricted by law from making a gift or other disposition of the property without a proper and legal cause. And they, as well as the daughter’s son, are not entitled to inherit if the property be joint and undivided, in which case they, and they only, who are said to have been entitled, on the non-existence of the widow and the rest above mentioned, would inherit.—Vide Macm. H. L. Vol. I. p. 22.
same order as far as the seventh degree in ascent (enumerated from the late proprietor inclusive.) In default of sapindas, the succession devolves on the samánodakas (kinsmen allied by a common libation of water,) who are kinsmen as far the fourteenth degree, including those above enumerated. In default of the samánodakas, the bandhus or cognates succeed. These kindred are of three descriptions, personal, paternal, and maternal. The personal kindred are the sons of his own father's sister; the sons of his own mother's sister, and the sons of his maternal uncle. The paternal kindred are the sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle. The maternal kindred are the sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle. Here by reason of near affinity, the cognate kindred of the deceased himself succeed first, on failure of them, his father's cognate kindred, in their default, his mother's cognate kindred inherit.

In default of them, the Achárjya or spiritual preceptor, the pupil, fellow student in the Vedas, and Brahmens learned in the Vedas successively succeed; and lastly, always excepting the property of Brahmens, the estate escheats to the ruling power.

In the Vyavahára-Máyákha, an authority of great eminence in the west of India, a considerable deviation from the above order appears, and the heirs after the mother are thus enumerated. The brother of the whole blood, his son, the paternal grandmother, the sister, the paternal grandfather, and the brother of the half-blood inherit together. In default of these, the sapindas, the samánodakas, and the bandhus inherit successively, according to their degrees of proximity.

ADPTION.

The law of adoption does not exhibit much conflict of doctrines between the several schools. It must be known, however, that in Bengal and Drávira (the Deccan) the Dattaka-chandriká being respected and followed in preference to the Dattaka-Mimánsá and the other works (on the subject,)* the adoption rules followed in this country are the same as those in force and acted upon in the Deccan; whereas in the

* The doctrines of the Dattaka-Mimánsá, &c. are also respected and followed in this country, with the exception of such of them as are contrary to the doctrines of the Dattaka-chandriká.—See the Preface.
other schools the Dattaka-Mimámśa being followed in preference to the other works, the differences (in the doctrines of adoption) between those schools and of the Bengal or Deccan school are the same as those between the Dattaka-chandikā and Dattaka-Mimámśa. Of those, the material ones are as follows.—In the schools other than Bengal and Drávīra, a Dattaka son must be adopted previous to his initiation by the ceremony of tonsure, and before the fifth year of his age. And although a boy, whose tonsure has been performed within the fifth year of his age (in the family of the natural father) may be adopted, yet he cannot become a Dattaka son in the ordinary form, but must be considered an Anitya Dyámsuyáyana, notwithstanding the tonsure be repeated in the family of the adopter; whereas in Bengal and the Deccan a twice born man may adopt a son before the upa-nayana, and a Śádra before the marriage, of the boy. In the two latter schools, a wife cannot adopt a son without her husband’s consent or authority, whereas in the Benares and other provinces she can do so with the sanction of her husband’s nearest of kin,—viz. her father-in-law and the rest. In the case of famine or a like distress, a woman can of her own authority, give a son for adoption in the provinces other than Bengal and Drávīra. Where a legitimate son is born subsequently to the adoption, (he and the adopted son inherit together; but) the adopted son takes one third according to the law of Bengal and Deccan, and one fourth according to the doctrine of the other schools.*

According to the Mayákha, an authority of the greatest eminence among the Maháratas, the restriction as to age relates only to cases where no relationship subsists; but when a relation, or sa-gotra (a person of same race,) is to be adopted, no obstacle exists on account of his being of mature age, married, and having a family.

The kritrima form of adoption prevails in Mithilá. In other provinces also, recourse may be had to this form of adoption wherever it is legalized by the local usage or family custom.

STRI-DHAN.

If a woman die without issue, that is, leaving no progeny, in other words, leaving no daughter, nor daughter’s daughter, nor daughter’s

* In other respects the doctrines of the Dattaka-Mimámśa, etc., generally agree with, and do not materially differ from, those of the Dattaka-chandikā.
son, nor son, nor son's son, the woman's property, given by affectionate friends and so forth, shall be taken by her husband and the rest.—Of a woman, who dies without issue, as before stated, and who had become a wife by any of the four modes of marriage denominated Brāhma, Daiva, Ārha, and Prājapati, the property belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (sapinda) allied by funeral oblations. But, in the other forms of marriage, called Āsura, Gandharva, Rākshasa, and Poṁbhācha, the property of a childless woman goes successively to her mother and father. On failure of them, their next of kin take the succession. In all forms of marriage, if the woman leave progeny her property goes first to her daughter.* And here in the case of competition between married and maiden daughters, the unmarried take the succession; but, on failure of them, the married daughters, and here again in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed. But this (rule, for the daughter's succession to the mother's goods) is exclusive of the fee or gratuity; for that goes to the brothers of the whole blood. On failure of all daughters, the granddaughters in the female line take the succession. If there be a multitude of these [granddaughters,] children of different mothers, and unequal in number, shares should be allotted to them through their mothers. But if there be daughters as well as daughter's daughters, a trifle only is given to the daughter's daughters; on failure also of daughter's daughters, the daughter's sons are entitled to the succession. If there be no grandsons in the female line, sons* take the property; on failure of sons, grandsons inherit their paternal grandmother's wealth. On failure of grandsons also, the husband and other relatives above mentioned are successors to the wealth.†

* Mādhyaṇḍarīya contends that sons and daughters inherit their mother's peculium together, only where it was derived from the family of the husband.


Sir William Macnaghten, adopting in his book Sṛi-kṛṣṇa Tarkadākṣa's order of succession to the Sṛi-dham, says: "The order above given is chiefly taken from Colebrooke's translation of the Daiva-dṛṣṭya, page 100. I do not find that the law in this particular varies materially in the different schools; except that (as in the case of succes-
Should a damsel, any how affianced, die before the completion of the marriage, let the bridegroom take back the gifts which he had presented, paying, however, the charges on both sides. But her uterine brother shall have the ornaments for the head, and other gifts which may have been presented to the maiden by her maternal grandfather, of other relation; as well as the property which may have been regularly inherited by her. On failure of them, it shall belong to the mother; or if she be dead, to the father.

In certain circumstances, a husband is allowed to take his wife's goods in her life-time, and although she have issue. For instance, in a famine, for the preservation of the family or at a time when a religious duty must indispensably be performed, or in illness, or during restraint or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But if he seize it in any other manner, or under other circumstances, he must make it good. The property of a woman must not be taken in her life-time by any relation other than her husband: and such ornaments as are worn by women during the life of their husbands, the heirs of the husband shall not divide among themselves: they who do so are degraded from their tribe.

**ALIENATION OF THE UNDIVIDED OR DIVIDED PROPERTY.**

The *Hindu* law, as current in the provinces other than that of Bengal, not recognising any individual co-parcener's proportional right in the joint property, none of the co-parceners in those provinces is competent to make a gift or other disposition of the undivided estate. Nevertheless, while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated, even one person, who is capable, may
make a gift, mortgage or sale of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.* The man, who has no son, grandson, or great grandson in the male line, has absolute power over the property real or personal, ancestral or self-acquired, but he who has an heir or heirs of the above description, can alienate the movable property, ancestral or self-acquired, for purposes prescribed by law, but cannot alienate the self-acquired real property without the consent of such heir or heirs; but he has no power to alienate the ancestral real property, because in such property the right is always limited; and the sons, grandsons, and great grandsons of the occupant, supposing them to be free from those defects, mental or corporeal, which are held to defeat the right of inheritance, are declared to possess an interest in the property in question equal to that of the occupant himself;† except when the income of the property is more than sufficient for the maintenance of the family, in which case he may dispose of some part of it.‡

In other respects there is no material difference between the law as current in Bengal and that in the other schools.

† Vide Coleb. Mitak, Ch. I. Sect. I, § 35 & 27.
‡ See Mitak, Sana, p. 239, and Coleb. Dig. Vol. II. pp. 119, 118, & 123.
APPENDIX.

ABSTRACT OF CASES NOT CONTAINED IN THE CHAPTERS IN THEY OUGHT TO HAVE BEEN.

RELATION TO WHAT CONSTITUTES TITLE TO INHERIT.

Case No. 2578 of 1864.

Bindoo-basinee Debee (Plaintiff) Appellant versus Amad-Paul (Defendant) Respondent.

Suit by a widow for possession of her husband's share of property inherited from his grand father. Held that if the husband before his grand father, she had no title; but that if he has his grandfather, his widow would be entitled to his share on property being given in commensality with the defendant within 12 years from the date of her dispossessio.—H. C. A. The 15th of February Weekly Reporter, Vol. II. p. 179. See ante, p. 2.

RELATING TO VOLUNTARY ABANDONMENT.

Case No. 932 of 1864.

Protaup-chunder Roy Chowdhoory (one of the defendant) Appellant Sreemotee Joy-monee Debee Chowdhooree and others (Plaintiffs) Respondents.

According to Hindoo law, a widow in possession can relinquish relinquishing antecipate for the reversioners their period of stay. A relinquishment in favour of second reversioners is also valid with the consent of the first reversioners.—H. C. A. The 9th September 1864. Weekly Reporter. Vol. I. p. 98. See ante, p.

RELATING TO SUCCESSION.

Case No. 258 of 1664.

Hurro-soondery Debea Chowdhooree (Plaintiff) Appellant Rajessury Debea (Defendant) Appellant.

The doctrine of the Hindoo law that a widow, succeeding her husband, cannot recover property of which he was not personallyavourite when the husband has vested interest under deed, the actual enjoyment being postponed.—H. C. A. The May 1865. Weekly Reporter, Vol. II. page 321. See ante, p.
CASE No. 17 of 1859.

Hoona-moyee Dassee and another, (Defendants) Appellants versus Gobind-nath Roy (Plaintiff) Respondent.

special appellant urges, first, that the plaintiff as reversionary could not sue for possession during the lifetime of the widows, at the judge in awarding him absolute possession has acted contrary to law and precedents.

find that neither was the suit for absolute possession nor do the of the judge's decree bear such interpretation. On the ground aged waste the plaintiff, as nearest of kin, sought to rescue the property from the hands of the widow; and the Lower Courts, finding legation true, adjudged him entitled to hold it on behalf of, and for the widows, receiving the rents, and after deduction of tenant charges, paying over to them the net proceeds of the estate in their lifetime.

a pleader next contends that the plaintiff has no right of action versioner, because the adoption, by the widows, of a son who died, hanged the line of descent; but the pleader is unable to show us the natural succession has been interfered with by the adoption, n what manner that act has operated to interpose any other ber of the family between the plaintiff, and the right of inherit- by reversion.

re confirm the decision of the judge, and reject the special appeal costs.—The 6th of July 1859. S. D. A. D. p. 944.

CASE No. 210 of 1864.


appears to us that the case turns on the three following questions.

t Was the property in question the stri-dhun of the donor?

d If not, could the donor alienate with the consent of the in-late heirs?

d Was the property attached by the defendant before any validation had been made by the widow?

here was no evidence placed before us relative to the first of these tions, and therefore as the burden of proving the property to be
stri-dhun rests with those claiming under her, our answer to this must be in the negative.

The second is a proposition which the Hindoo law asserts affirmatively.

But as to the third question, we think that no valid alienation had been made before the attachment took place. Apart from all collusion or fraud, it does not appear from the heir's attestation to the deed of gift that he thereby intended to consent to the alienation of ancestral property; but only that he witnessed a conveyance of what the donor claimed to be her 'stri-dhun'. It was ably urged before us, that he alone and not a stranger was entitled to raise this objection to the validity of the deed, but we do not yield to this argument. We are of opinion that a deed of an alienation by a childless Hindoo widow of her late husband's property is not good against any one, unless it can be shown to have been made either with the consent of the immediate heirs, or under one of those exigencies which give a widow a power of sale. It was not contended that the latter was the case here, and we are not satisfied by the evidence that the heir signed the deed of gift with the intention of passing the ancestral property.


Case No. 63 of 1864.

Ram-dyal Deb and others (Defendants) Appellants versus Musst. Magnee and others (Plaintiffs) Respondents.

The plaintiffs in this suit (special respondents before us) sued as heirs of their father, Jeet-ram, to recover possession of certain Nowabad and rent-free lands, forming part of the ancestral estate.

With regard to the first objection, we observe that, in reading the decision of the lower (i.e. the Moonsiff's) Court dated the 6th of April 1861 it appears that it was the case of both parties and never denied, that the plaintiffs' father Jeet-ram died, leaving a son, Golaub-chunder, two daughters who are now the plaintiffs' his widow Jussoda, and his mother Soo-lochunna him surviving. Had the Moon-siff's judgment been before the Court at the first hearing, there could have been no remand, but the document was not translated with the
other papers, the pleaders engaged being apparently ignorant of the importance of the facts therein stated, and was not brought to the Court’s notice.

On the plaintiff’s own case, it appears that they claim as heirs of Golaub-chunder; and as a sister cannot, according to Hindoo law, inherit as heir to her brother (Vide Macnaghten’s Hindoo Law Volume II, page 107,) the decision of the Court below must be reversed, and the suit dismissed without costs, the expense of the remand having been occasioned by the neglect of the appellants’ pleaders to bring the facts of the case properly before the Court at the first hearing. H. C. A. The 28th of November 1864. Weekly Reporter, Vol. I, page 227.

Case No. 3109 of 1864.

Kalee-pursaud Surma (Plaintiff) Appellant versus Bhoirobee Debee and others (Defendants) Respondents.

It does not seem to be disputed that the estate of Deby-pursaud came to his son kalee-kinker; and the right then of the defendants depends on the question whether, under the Hindoo law or the custom of the country, sisters succeed. This has not been decided; but we think there can be no doubt that, as sisters, the defendants cannot, under the Hindoo law, succeed their brother Kalee-kinker, nor can a sister’s daughter. It is said that of the three sisters one is a widow, and another is unmarried, and the third has a daughter and may have a son, who would be heir, but no son has been born yet, and the inheritance can not remain in abeyance, we must hold then that the defendants as sisters of Kalee-kinker, have no right of inheritance to him, and that the plaintiff, whose lineage is not disputed, is capable in the absence of other nearer heirs of succeeding to him. The decision of the lower court must therefore be reversed, and the suit remanded in order that the other issues raised in the defence may be tried.—H. C. A. The 15th of February 1865. Weekly Reporter. Vol. II. page 180.

Case No. 991 of 1865.

Raj-gobind Dey (Plaintiff) Appellant, versus Rajessuree Dossee and others (Defendants) Respondents.

With regard to the question of heirship, we observe that the point has been already decided by the full Bench ruling of this court, dated
21st June 1864. Jotindro Hurree-hur, defendant in the special number of the Weekly Reporter decision to the same effect, passed by a Division on the 31st March 1863. Hurree-madhub Ro Choudhury. Following these decisions, therefore, Principal Sudder Ameen that the plaintiff's paternal uncle's daughter's son, is not, according laid down in the Dāya-bhāga, the heir of Rāj. The 29th of August 1865. Weekly Reporter, 1

Case No. 218 of 1864

Bama-soonduree Dossee (Plaintiff) Appellant. 
Doya-moyee Dossee and others (Defendants) Respondents.

The only matter to be settled in this case is whether the eldest son of the plaintiff. It is true the wording of the plaint, excluded that were raised in the case; but it is evident to us not been precluded from offering evidence on no evidence upon this point, and the proof plaintiff satisfied the lower court, and has satisfied first son of the plaintiff was born more than before of the mother of the plaintiff. It is true the uses the words "long after," but they are certainly that there was not before him even a suggestion pregnant at the time.

As the inheritance could not be suspended birth, at some future time, of a son to the also was entitled to succeed to Doya-moyee a son Kali-churn whom she had succeeded after pellant admits that, as sister, she has no right of no date being given of the birth of this son's circumstance against her.

We see no reason to interfere, and reject. The 22nd of December 1864. The Weekly Re
CASE No. 2161 of 1864.

Bheem-ram Chuckerbutty (Plaintiff) Appellant versus Hurry-kishen Roy and others (Defendants) Respondents.

A suit by a reversioner to set aside an alienation is cognizable if the title of the reversioner has been injured by a distinct act of alienation, and if the widow who ought to have brought the suit has relinquished her life interest and signified to the suit proceeding.

According to the Hindoo law one brother is the manager and trustee for another brother's widow and his possession is not adverse possession to her.


CASE No. 407 of 1865.

Radha-pearce Dossea and another (Plaintiffs) Appellants versus Doorga-monee Dossea and others (Defendants) Respondents.

Husband's brother's son's daughters are not heirs according to Hindoo law. H. C. A. The 6th of March 1866. Ibid. Vol. V. p. 131

CASE No. 330 of 1865.

Ishan-chunder Choudhoory (Defendant) Appellant versus Bhyrub-chunder Choudhoory (Plaintiff) Respondent.


CASE No. 337 of 1866.

Tara-chand Ghose (one of the defendants) Appellant versus Pudm-lochun Ghose and others (Plaintiffs) Respondents.

In a Hindoo family where union has taken place among certain members after partition, the members of the re-united family and descendants succeed to each other to the exclusion of the members of the unassociated or not re-united branch. H. C. A. The 11th of May 1866. Ibid. p. 249.
Case No. 1328 of 1864.

Radha-gobind Doss and another (Plaintiff) Appellants versus Mian Jaun (Defendant) Respondent.

A grandaon born after the death of his maternal uncle, by the life time of his maternal grandmother, may inherit from property which she inherited from the uncle (her son.)—H The 14th of December 1844. Ibid. Vol. I. p. 123.

Relating to Limitation, &c.

Case No. 178 of 1864.

Moonshee Suyed Ameer (one of the defendants) Appellant versus Mohendo-nath Bose (Plaintiff) Respondent.

Case No. 179 of 1864.

Behaus-coomaroe (one of the defendants) Appellant versus Monath Bose (Plaintiff) and Motee-soonderee Dossy (Defendant) Respondent.

Case No. 180 of 1864.

Suhodara Bibee (one of the defendants) Appellant versus Mohendo-nath Bose.

A reversioner cannot, during the life time of a Hindo sue to set aside a sale made by her if 12 years have elapsed date of the sale, though he may during her life time sue to
Case No. 2910 of 1844.

Rooknee-kaut alias Anund-mohon Sircar (Plaintiff) Appellant
versus Kuroona-moyee Goopta and others
(Defendants) Respondents.

The right to bring a suit for possession as heir to a deceased person does not accrue during the life time of the deceased's widow. The 23rd of March 1865. Weekly Reporter Vol. II., p. 244.

Case No. 87 of 1865.

Wooday-chand Jha and others (Defendants) Appellants versus Dhun-
munee Debea (Plaintiff) Respondent.

The mother and guardian of a minor reversioner, being herself a reversioner and of full age, may sue without obtaining a certificate under act XL of 1858.

A reversioner may sue during the widow's life-time, to obtain a declaration that a conveyance made by the widow is invalid as made without legal necessity, therefore not binding beyond the widow's life. H. C. A. The 7th of August 1865. Ibid. Vol. III. p. 183.

Case No. 2955 of 1866.

Hurrish-chunder Sen Lashker guardian of Okhjoy-chunder Sen
and another, minors, (plaintiffs) Appellants versus
Brohmo-moyee Dossee and others (Defen-
dants) Respondents.

A reversioner may sue to have a conveyance by a Hindoo widow declared void as against him, but he can not sue simply for ejectment and possession during the life-time of the widow. H. C. A. The 6th of March 1866.—Weekly Reporter Vol. V. p. 131.

Case No. 321 of 1865.

Kishen-mohon Koond and others (Defendants) Appellants versus
Muddun-mohon Tewaree and others (Plaintiffs)
Respondents.

After act XIV of 1869 came into operation, an adopted son out of possession should sue within three years of his majority to set aside il-
legal acts of his adoptive mother performed twelve years before the suit.
No cause of action to sue to set aside these acts arises to the adopted either from the date of his obtaining possession of the estate, or from the date of the final decisions in any case brought for him or against his mother, or by or against him, to prove or disprove the validity of his adoption.

No deduction from the period of limitation can be allowed to the adopted son for the period of pendency of these suits. The 11th of January 1866.—Ibid. p. 32.

RELATING TO CUSTOM.

CASE NO. 129 of 1853.


Ishur-chunder Chowdhree, well-wisher of Rajah Sree-kishen Singh, minor, petitioner.

JUDGMENT.

This case was before the Court on the 20th February 1850, and was then remanded for investigation on the merits. It has now come up before us in appeal, the issue arising out of the pleadings is simply this, is there a custom in the family of the plaintiff by which the eldest son alone succeeds to the estate of Shooosong under which custom Bance Indra-monee received maintenance and in opposition to which plaintiff has been dispossessed by the defendant under the orders of the Sessions Court, or does the ordinary rule of succession under the Hindoo law, prevail in the family of the defendant? If the special custom be proved to exist, under his pleading can have prevailed by Defendant? that the defendant in any shape, if the F's claim must also have pleaded as so, it is not for the have not brought the validity of the case.
In cases in which a family usage is set up against the ordinary law of inheritance it is necessary that that usage be ancient and invariable and be established by clear and positive proof.

That the estate of Shoosong was in the nature of a Jagheer in the time of Mahomedan rule and that it bore a preh-cush Jumma, not a hustobood one, in other words that it paid tribute and not revenue, seems undoubted, and it appears whether by mistake or otherwise that at the time of the decennial settlement the revenue fixed upon the estate was the amount of tribute which had previously been paid and not a sum calculated on the assets of the land, but even then and granting that all the documents alluded to above, are genuine and authentic, there is in them no proof of any custom in the family giving a right to the eldest son to succeed to the jagheer. The holders of the jagheer appear from the firman to have been mere tenants for life, and no right to succeed seems to have been vested in any one, and though the nearest male heir may have succeeded, it was by the pleasure of the reigning prince or from a public convenience, and not from any right in the parties under a recognized custom in a Hindoo family; but the deed of gift dated 1141 B. E. is fatal to the claim of any family-custom existing at that time; for by it Rajah Ram Singh, after embracing Mahomedanism attempted to bestow the estate of Shoosong partly on his Mahomedan daughter and partly on his Hindu son, and finding himself unable to effect his purpose he bestowed the whole estate upon Run Singh. If the family custom now set up existed, the estate as was well remarked by Baboo Kishen-kishore Ghose, a vakeel of the appellant, would have descended to Run Singh without a gift. Moreover, the deed of gift shows that in the opinion of the then holder of the Jagheer, he had the power to bestow it on whom he pleased, and he was only thwarted in his purpose by orders from the Mahomedan Government, not from considerations arising from an alleged family-custom, moreover, the deed of gift recognized a tenant of the Jagheer who had become Mahomedian and who still retained possession of the estate to the detriment of an Hiddo son, a fact which is quite irreconcilable with the existence of any family-custom recognized or recognizable amongst Hindoos.

As then the respondent has been unable to afford that clear and positive proof of the ancient and invariable custom set up in his plaint,
which the nature of the case requires, as moreover appellant has proved by most cogent evidence that since the death of Rajah Raj Sibgh, who was in possession of the estate of Shoosong before, and after the decennial settlement, the ordinary rule of Hindu inheritance has prevailed in the family, we reverse the decision of the lower court with costs.—The 12th of May 1856. S. D. A. D. p. 399:

RELATING TO MAINTENANCE.

CASE No. 2603 of 1864.

Khooodee-monee Debea (Plaintiff) Appellant versus Tara-churn Chuckerbutty (Defendant) Respondent.

According to the Hindoo law a son's widow is entitled to maintenance so long as she leads a chaste life, whether she elects to live with her father-in-law or with her own relations.—H. C. A. The 27th of January 1865. Weekly Reporter Vol. II, p. 134.

CASE No. 3995 of 1865.


Granting that a father-in-law was bound by law to maintain his son's widow wherever she might elect to live, so long as she led a chaste and virtuous life, that law could only take effect on the supposition, that he had means to do so; and it was manifestly improper in the judge to decree the comparatively large sum of 3 rupees a month without first making inquiry to the special appellant's power to carry out the court's order.—H. C. A. The 28th of April 1866. Ibid. Vol. V, p. 225.

CASE No. 3006 of 1865.

Bhurub-chunder Ghose and another (Defendants) Appellants versus Nubbo-chunder Gooho and others (plaintiffs) and others (Defendants) Respondents.

A Hindoo widow's right to maintenance out of the lands which belonged to her husband and have devolved on her son, is a purely personal right, which cannot be sold in execution of a decree or otherwise transferred.—H. C. A. The 22nd of February 1865.—Ibid. p. 111.
VYAVASTHA-DARPANA.

RELATING TO PAYMENT OF DEBTS

CASE No. 895 of 1865.

Biswambher Roy (Plaintiff) Appellant versus Lakkhee-kaunt Neoghy and others (Defendants) Respondents.

The plaintiff is undoubtedly liable for his father's debts to the extent of the assets of the father's estate received by him, but if he can prove that the property which the creditors seek to sell, was not inherited by him from his father, but from his maternal grandfather, it can not be sold for the debts of the father. The case is sent back for a trial on this point. H. C. A. The 14th of July 1855. Weekly Reporter, Vol. III., p. 137.

RELATING TO PARTITION.

CASE No. 2264 of 1864.

Tilock-chunder Roy (Plaintiff) Appellant versus Ram-lukhee Dossee and others (Defendants) Respondents.

This appeal is on a question of Hindoo law. A, B, and C, are brothers, the two first uterine, and the other by another mother. A, dies, who is to succeed to his property?

The property in question is a joint undivided estate, and under such circumstances it is laid down in Macnaghten's Hindoo law, Volume II. page 66, that both surviving brothers, uterine and of the half blood succeed equally to the estate of their deceased brother. Semble, Colebrooke's Dāya-bhāga page 200, and Colebrooke's Digest, Volume III. page 518.

The Judge was, therefore, right in law; and we dismiss the special appeal with costs.*—H. C. A. The 12th of January 1865. Weekly Reporter, Vol. II. p. 41.

* This decision does not appear to be accurate; because, it makes no distinction between the movable and immoveable parts of the estate in question, to the former of which the uterine brothers are exclusively entitled; and because the law does not contemplate that where partition did not take place, the whole of the immovable property which would have formed the portion of the deceased brother, should be taken in equal shares by the brothers of the whole as well of half blood; but (as is justly interpreted in Colebrooke's Digest Vol. III. p. 518.) "if any immovable property of divided heirs, common to brothers by different mothers have remained undivided being held in co-parenery, the half brothers have equal shares with the rest, but the uterine brother has the sole right to the divided property movable or immovable." This mistake seems not to have been taken notice of. The passage cited from the Dāya-bhāga says nothing about the divided and undivided
to which it is unnecessary further to allude, that alienation, under such circumstances of necessity, was valid under Hindoo law; the particular point, however, now before the Court, was raised in the case of Ram-lochun Roy, versus Banee-mohun Ghose;† in that case the minor on reaching his majority sued the purchaser and his eldest brother to recover his share of a paternal estate sold by his brother to the other defendant whilst acting as his guardian during his minority; it was shown on the part of the purchaser that the eldest brother, as guardian of the minor, mortgaged, with other share-holders, his own share and that of the minors to him for the express purpose of paying up the arrears of revenue on account of which the property was about to be sold at public auction, and he filed a deed of conveyance and a judgment bond to prove this, and this Court was of opinion that as the mortgage of the minor’s share by his legal guardian was a bond-fide transaction, and entered into for the benefit of the property, and no suspicion of fraud apparent, the transaction was perfectly legal and valid, it consequently was upheld. In the second volume of Macnaghten’s Principles and Precedents page 293, an opinion of the pundit is reported, which supports in substance the doctrine laid down by the Court in the case just cited; it is there laid down “that if a woman, on her husband’s demise, sell his landed property for the purpose of maintaining her minor son and grandson and liquidating the arrears due to Government, the sale must be considered good and valid, for it is necessary to provide food and raiment to the minor and to discharge the Government revenue;” this, it is added, is conformable to the Diya-bhóga and other authorities; though, in this opinion, the payment of the Government revenue is regarded as the necessity legalizing the sale, and nothing is said of the benefit of the minor, still it seems clearly to be implied that both the cases put, viz. the maintenance of the minor and his mother, and the liquidation of the Government revenue, that the benefit of the minor, as creating the necessity, is the test by which the legality of the transaction must be tried; but setting authority aside, and looking only to the reason of the thing, it seems to us that the rule in such cases, as

† Decisions of Sudder Dewanny Adawalut for 1846, page 371.
that now before us, is, that a party filling a fiduciary character, like that of guardian, is authorized to perform any act which is manifestly for the infant's benefit. On, then, the grounds both of authority and reason, we are of opinion, as before observed, generally, that a bona-fide sale or mortgage entered into by the mother of a minor, for the benefit of that minor, is valid under Hindoo law.

Looking to the evidence produced by the (defendant) appellant as to the whole transaction now before us, we are strongly impressed with the bona-fides by which it is characterised; it is not a secret transaction entered into between the mother of the minor alone on one side, and the mortgagee on the other; but one, into which all the sharers of the property entered to save the joint property.

Evidence of the above nature on the part of the respondent, there is none, we, therefore, holding the transaction, which plaintiff has sued to set aside, to be a bona-fide one, entered into for his benefit by his mother during his minority, reverse the decision of the lower court with costs. The 11th of December, 1856. S. D. A. D. p. 980.

RELATING TO WILL, INCHOATE RIGHT, &c.

Bhoobun-mooyee Debea against Ram-kishore Acharjea, Petitioner.

Whatever objection may arise to such a disposition in other parts of India, from the doctrine that inchoate right of the son to property is from his birth, none such can arise in Bengal, where the above doctrine is not recognized, where, whilst the father lives, and is free from defect, the sons have no right at all, and where, by the power of making testamentary dispositions of property, the father, if so minded, can will away, even to a stranger, the whole of his ancestral property.—Part of the late Sudder Court's order admitting review of Judgment in the above case, under date the 14th of January, 1860. See the last foot note at page 2; see also page 552 et seque.

RELATING TO MARRIAGE.

Mudhoo-noodun Mookerjea (one of the defendants) Appellant versus Jaudub-chunder Banerjea (plaintiff) Respondent.

A Koolin Brahmin is not such a natural guardian of his daughter as the mother. The want of guardian's consent will not invalidate a marriage otherwise legally contracted and performed with all the necessary ceremonies.—H. C. A. The 9th of August, 1865. Weekly Reporter, Vol. III, p. 194. See ante, pp. 653,654,655, et seque.
Relating to the heritable right of the son of a daughter who inherited in the maiden state.

Case. No. 1039 of 1866.
Radha-kishen Manjhee (plaintiff) Appellant versus Rajah-ram Mundul and others (defendants) Respondents.

The Court below has tried this suit in the following issue. "Whether if a Hindoo daughter unmarried succeed to the paternal property and die leaving a son, her share goes to her sisters, provided they have, or are likely to have, sons, or to her own son." the Judge found that the estate went to the sisters having or likely to have sons to the exclusion of the son of the unmarried daughter.

Vyavastha Durpana and the decision of the late Sudder Court dated the 8th August 1821 are quoted in support of this ruling.

It is admitted that this suit is governed by the Hindoo law as current in Bengal. Now it is clear that in default of son, grandson, great grandson or widow, the unmarried daughter succeeds in preference to the married daughter. In this case it has been found by the Court of first instance that the wife of the special appellant was unmarried when her father died. This fact is not disputed. She married and died leaving a son, that son is entitled to succeed in exclusion of the sisters and sisters' sons (Macnagthen's Hindoo law Vol. I, page 25. Elberling on inheritance, pages 75,76; Dya-biya. Colebrooke's Translation, Chap. II. page 193. Para. 30.)

The Judge has quoted from the Vyavastha Darpana, a Digest of the Hindoo law by Baboo Shamachurn Sircar, a work of great research and utility, but which is not recognised by our Courts to be of so great an authority as the more corrected and learned work of Sir William Macnaghten.

In the work of the Baboo, we find it laid down that, "on failure of son, grandson, great grandson and wife, the unmarried daughter is the sole heiress of her father's estate." Page 147 (First Edition.)

It is true that in the same page the following passage occurs: "If the maiden daughter in whom the succession has vested, and who has been afterwards married, die, then, on the death of this daughter vested
with property, the estate which was hers becomes the property of
those persons, the married daughter or others, who would regularly
succeed if there were no such unmarried daughter in whom the in-
heritance vested." But the author does not give any opinion as to
the rule of succession in a case where the unmarried daughter, in
whom the succession has vested, marries and leaves male issue.

The decision of the late Sudler Court alluded to by the Judge is not
at all in point and does not apply to the question before the Court, the
decision is reversed, and the suit remanded for the trial on the merits.

Remark.—With due deference for the (two) Honorable Judges de-
ciding the above case, the author begs leave to state that the passage
quoted by them from the Vyavastha-darpaha (p. 147, First edition,) is
not the author's own composition, but is cited by him from the Dāya-
bhāga (p. 193) striped, however, of the inueno supplied by Sri-krishṇa;
who on the above point has differed not only from Jīmūta-vāhana, the
founder of the Bengal School, but also from Raghu-nandana and the
rest, and nevertheless he is followed (at least on the above point) by Sir
William Macnaghten, and then of course by Mr. Elberling. Had the
Honorable Judges read the above passage of the Dāya-bhāga cited by
them for authority, leaving out the inueno or foreign matter introduced
by Sri-krishṇa, and by which they have been misled, they would have
found it contrary to their Judgment, and consonant to the opinion
inculcated in this book.

As to the honorable court's remark that "the author does not give
any opinion as to the succession in a case where the unmarried
daughter in whom the succession has vested marries and leaves male issue," the author most respectfully refers the court to the subse-
quent passage contained at the same page (147,) in which, after citing
Sri-krishṇa's opinion, he has adverted to the doctrine of Jīmūta-vāhana
and the rest, and given preference to the same,‡ as being not only the
document of the highest and paramount authorities.—Jīmūta-vāhana and
Raghu-nandana, to whom Sri-krishṇa is inferior, but also consistent
with justice and reason,† which, according to our legislators Jāgnya-
valkya and Vrihaspati, followed by Sir Lawrence Peel and
others, are to be regarded than the mere text of law.‡

* See Colebrooke's preface to the Dāya-bhāga, pages, IV & V.
† See ante page 147. ‡ See ante, pp. 283, 387.
It is not known why Sir William Macnaghten has given preference to the above opinion of Śrī-krishṇa without considering and weighing the sound and equitable doctrine of Jīmūtā-vāhana and Rāghu-nandana. But it is a matter of regret that the Dispensers of justice should have, on the above point, followed the opinion of Śrī-krishṇa adopted by Macnaghten, rejecting the superior authority of Jīmūtā-vāhana and Rāghu-nandana, particularly when the latter is consistent with justice and reason, and the former, arbitrary.

The author further regrets to see that the court have, in the present case, deviated from their own ruling, namely, wherever Śrī-krishṇa differs from the main authority—the Dāya-bhāga of Jīmūtā-vāhana, there, the latter should be followed in practice. It was according to this principle that they rejected Śrī-krishṇa’s doctrine (and consequently that of Sir William Macnaghten also,) respecting the succession of the son of the brother’s daughter, paternal uncle’s daughter and granduncle’s daughter.* But here we see they have, by rejecting the authority of Jīmūtā-vāhana, and accepting that of Śrī-krishṇa or Macnaghten, acted contrary to their own ruling, and justice.

Then as to Macnaghten’s work being a more correct one, suffice it to refer the reader, inter alia, to his principles respecting the inchoate right, stṛ-ḍhan, and Hindoo’s will,† with respect to the last in particular, his doctrine is rejected by both the Sudder and Supreme Courts, and he is sarcastically attacked by one of the ablest judges of the Sudder for having laid down a principle contrary to the opinion of Mr. H. Colebrooke, and is censured by one of the ablest judges of the Supreme Court for having misled the court for a short time; and to the decision in Gobinda-mani Dāsi versus Shām-lāl Basīk and others, passed by a Full bench composed of the learned Chief Justice and four puisne Judges against the opinion of Sir W. Macnaghten. (see ante, p. 149.)

**Relating to Alienation by the Managing Member of a Family.**

Mr. John White, (one of the defendants) Appellant versus Bishto-chunder Biswas (plaintiff) and others (defendants) Respondents.

Mr. Justice G. Campbell.—On the first hearing, we came to the conclusion that the decision of the case must depend on the application of the purchase-money.

* See Gobinda Choudhuri versus Hari-madhub Roy (ante, 276.)
† See ante, pp. 2 (ante), 1061, 1043 (note), 508 (note), 569.
f the money went to the benefit of the joint family, plaintiff in
er to preserve his right to dispute the sale should have refused
ticipation in these benefits, and made the purchasers aware that
reserved his rights, and would have none of their money. It is
r that after the execution of the deed of conveyance by Issur,
ever did this, but being in daily communication with the pur-
sers he stood by while the money went to his family.

It is admitted that plaintiff's family was living in commensality
h Issur, who defrayed the joint charges, therefore the money which
it to Issur prima facie may be considered to have gone to the bene-
of the family. Next, (as very justly remarked by Mr. Justice
bhoo-nauth Pandit,) plaintiff, a member of that family, has not at-
ted to show what became of the money, or that Issur appro-
ated it to his own individual use.

On the whole, then, we think, that the probabilities and presump-
as are very strongly in favour of the belief, that in fact the money
used for the benefit of the family, and we consider, that plaintiff
ng stood by, while it was so used, cannot now contest the sale.

The decision in fact amounts to this: that when a man associates
self with another as joint family, cest-que trust and trustee, prin-
al and agent, or in any other way, and intrusts to that other,
agement of his affairs, then, if in dealing with others, that
ager exceeds his powers, still the client cannot, remaining passive,
d upon his rights, while he benefits by the transaction, but must
ving notice) so far and as soon as he reasonably may actively in-
re to wash his hands of the transactions, and refuse the benefit
ich would accrue to him.

Mr. Justice Sumbhoo-nath Pandit.—Plaintiff as proprietor of two
as ten gundas of joint property belonging to him, others and
ur-chunder Biswas, since deceased, sued for possession of his share
the joint property conveyed by the aforesaid Issur-chunder to Messrs.
il and White.

The deeds by him in favor of these two gentlemen are executed as
for his property alone, but Mr. White admits, that he knew that
ides Issur, others, and the plaintiff, who was in the service of the
at Indigo concern for several years, and afterwards for several years
der Mr. White, himself, had interest in the property.
We further think it proper to examine whether, even if the deeds be found to have been executed by Issur-chunder Biswas against the letter of any expressed authority enjoyed by him, the proceeds of this bargain were applied to the reduction of a joint debt, and that too, with the knowledge and consent of the plaintiff and others, and to take in to consideration whether with reference to his conduct, plaintiff is entitled to any equitable consideration. We find that although in the agreement, executed by Issur in favor of his co-parceners, there is a provision to the effect, that if he makes any alienation or permanent settlement it will be null and void, yet in the deed executed in his favor by way of authority, no such provision is found. In this deed the co-sharers after reciting that "during your (Issur's) life-time, none of us will sell, or give in gift, or create a dur-putnee of, or give a farm of, our shares' state to the address of Issur "that you are not authorized by any way to alienate or injure our shares, if you do, you will be held responsible." From this difference in the two deeds, it is clear that any one reading only the power given to Issur and taking into consideration out of it the words quoted above, might very easily be led to suppose that as in favor of an innocent purchaser, Issur had full power to execute deeds like those in dispute.

We are justified from all this as well as from the conduct of the plaintiff and other co-sharers, from which we have already inferred consent and ratification, to infer upon fair and sure grounds, that a large portion of the consideration money, received from Mr. Hill, was used towards the payment of the joint debts.

On all these grounds we think it proper to decree the Appeals and dismiss the plaint. The 16th of May 1863. H. C. D. Vol. II, p. 567.

MISCELLANEOUS.


The 11th of September 1866.*

Dukkhina Dossee (one of the defendants) Appellant versus Rash-Beharee Mojoonder and others (plaintiffs) Respondents.

The special appellant contends that the lower Courts have wrongly sided against her, that Ram-ruttun did not leave a son, and that us-moneee, the daughter of Ram-ruttun, succeeded to, and held as, the property of her father, without taking steps to procure the udance of her witness Bhugwan, and without allowing his pleader examine Ram-chunder Bagish, the priest of both the parties. It is her pleaded that the lower Appellate Court should have allowed special appellant to retain the property for the adopted son, whom is authorized to adopt, and who on being adopted would be entitled succeed as a nearer heir than the plaintiff.

The adopted son, if he had been in existence at the time of the death Ram-ruttun, or of his widow, or of his daughter, would have been nearer heir to the deceased Ram-ruttun than the plaintiff; but the Hindoo law does not appear to us to require that inheritance can be at suspended either because the special appellant had been left pregnant by her husband till she brings forth, or kept suspended till the defendant may adopt or lose her right to adopt by non-exercise of the right for more than 12 years, because she may, as is urged here, have retained a power to adopt.

In some cases of pregnancy, the inheritance remains suspended, but in a case like this, even if the appellant had been left pregnant by her husband.—Abstract of the above case. Vide Weekly Reporter, l. VI, p. 221.

The 28th of June 1866

Jopaul-chunder Manna (plaintiff) Appellant versus Gour-monee Dossee and others (defendants) Respondents.

The very strongest and most reliable evidence is required in the case a claim to a share in an estate larger than the Hindoo law allows.

In the absence of proof of collusion between the purchaser and the free-holder, the decree is binding against the heir in expectancy of a judgment-debtor.

* Note by the court—"This is not intended to disturb any decision holding the necessity a suspension in Bengal during the pregnancy of the deceased’s sister" (See ante, 6, 7, 234, 260.)
The fact of a reversioner being an attesting witness to a conveyance by a Hindoo widow, is an acquiescence on his part, which precludes him from impeaching the sale on the ground of waste.


Hara-dhun Naugh (plaintiff) Appellant *versus* Issur-chunder Bose (defendant) Respondent.

The claim of the plaintiff is for setting aside the deed of sale, as well as for recovery of possession, and so far as this last relief is concerned, the special appellant has undoubtedly no right to dispossess the widow, or the purchaser holding under her, during the life-time of the said widow.

But as far as the right of the Appellant is confined to his obtaining a declaration that the sale is invalid against him, on his establishing that the sale was made without the necessity recognized by the Hindoo law, we think (vide page 165 of the Special number of Sudderland's Weekly Reporter) that the plaintiff, special appellant, is entitled to sue for, only that special relief.—Abstract of the above case decided on the 11th of September 1866. *Fide* Weekly Reporter, Vol. VI, p. 222.

Kisto-moyee Dossee and others (defendants) Appellants *versus* Prosunno-Narain Choudhooory and others (plaintiffs) Respondents.

Where only the rights and interest of the widow in the property left by her husband were sold in execution of a decree against her, on account of a debt contracted by her, and neither the decree or the sale proceedings declared the property itself liable for the debt,—HELD that the purchase conveyed an interest in the estate only during the widow's life-time.—Abstract of above case, decided on the 14th of December 1866.—*Fide* Weekly Reporter, vol. vi, p. 303.

*Finis.*
INDEX.

A.

ABBRICATION, (see extinction of worldly affairs) .. 9,10,78,109,123
ABSENCE FOR MORE THAN TWELVE YEARS, effect of .. 10,12,13
ABSENT PERSON UNHEARD OF —
the period for which he must be waited for, and
after which he must be treated as dead, and his
property inherited .. .. .. .. .. .. .. .. .. .. 10,12,13
ABSTRACT, of the law of inheritance &c. as current in
the North Western and Southern schools .. .. 1039 et sequ.
ACHÁRA (see custom or usage)
ACHÁRA-KÁNDA OR ADHYÁYA ..! .. .. .. 1 preface.
ACQUISITION,
made by the use of the joint stock, or with the
funds or corporal assistance or with both of another
parcener or parceners, how to be shared, (see ac-
quirer) .. .. .. .. .. .. .. .. .. .. 192,465,469,478,521,570
of property acquired by the aid or funds of the joint
family must be shared, though it be recorded in the
name of one member .. .. .. .. .. .. .. .. .. .. 511,512,514,515,516,521
made without the use of the joint stock or labour,
or another's labour or funds, to be taken by the
acquirer alone, though messing jointly with
others (see partition) 503,505,508,509,510,511,517,518,520,521,524
made by several co-parceners by contributing means
or labour or both, how to be shared ..469,471,472,474,476,478
made through valour or science with the aid of the
members of the family, or any parcener or parceners,
to be shared between them, but that made without
such aid, to be shared only with the brothers more
or equally learned .. .. .. .. .. .. .. .. .. .. 500,501,502,505
by way of recovery of the usurped ancestral property,
without the use of the joint stock or aid, is not to be
shared with co-parceners, though land so acquired
should be shared with them, the recoverer taking a
fourth part over and above his share .. .. 429,473,500,505
liable to partition, and exempt from partition .. 500—503 et sequ.
made by a brother who went abroad to study science
or acquire wealth leaving his family to be support-
ed by his brother, should be shared by the latter .. .. 469,502
ACQUIRER,

takes two shares of the acquisition made by the use of
joint stock or corporal aid of the other parcener, otherwise the whole ...... 468,470,192,450
takes over and above his share one fourth of the land
recovered by him without the use of the joint stock or
aid ...... ...... ...... ...... ...... 429,473,503
ADMITTED TO VICE, or expelled from society, excluded
from inheritance ...... ...... ...... ...... 997,1009
ADOPTED DAUGHTERS, are also of different kinds... ...... 749 et seq.

ADOPTED SONS,

different descriptions of (See substitutes for the
oursa or legitimately begotten son)... ...... 744 et seq.

ADOPTED SON,

what kind or kinds of, allowed in the present
age ...... ...... ...... ...... ...... 747,748 (note,) 153
in the dattaka form allowed and used in Bengal...... 753,747,917
necessary for every person of any sex and in any of
the four conditions of life (grihi &c.) who is destitute
of a son, son's son, and son's grandson in the male
line, capable of performing the duties of a son, (See
adoption) ...... ...... ...... ...... 738-748,754,755
can be received by whom and under what circum-
stances (See adoption)... ...... ...... ...... ...... 754—821
cannot be received by whom or under what circum-
stances (See adoption)... ...... ...... ...... ...... 754,—821
can be given by whom and under what circumstances
(See adoption)... ...... ...... ...... ...... 821—825
must be of the same caste, not the only or the eldest
son of his father, not a prohibited relation, not also
disqualified for adoption by age &c. (See p. V.)...... 828,829,842
a prohibited relation is not, however, in-eligible
among the shudras ...... ...... ...... ...... 832
in the form of dwayamushayana (son of two fathers,
defined ...... ...... ...... ...... ...... 846
in the form of Nitya Dwayamushayana (completely
son of two fathers) and in that of Anitya Dway-
amushayana (incompletely son of two fathers) defined
...... ...... ...... ...... ...... ...... 847,848
his merit and demerit in preference to the nature of
gift, acceptance, relation, age, form, ceremonies &c...... 880—886
ADOPTED SON (Continued,)

in the absolute dattaka form, ceasing to belong to his natural family, becomes a member of the family of his adopter, represents his legitimately begotten son, and the duties and rights of such son devolve on, and vest in, him (See effects of adoption,) 887, 888, 917 et seq. 921, 925, 967, 917

his consanguinous relation with the natural family still subsisting, he cannot marry in that family. ... ... 888

if in the Dvyámushyāyana form, becomes a member of the adopter's family continuing at the same time to belong to the family of his natural father, and his relation with the family of his natural mother also fully subsists notwithstanding the creation of the relation with the adoptive mother and her family ... ... 889, 899

if in the Anitya Dvyámushyāyana form, his offspring belong to the race of the natural father alone ... 848, 890

if in the absolute dattaka form, bears the sapinda or other relation with the relations of his adoptive father and mother ... ... ... ... ... 890, 898

if in the Dvyámushyāyana form, bears such relation with the family of his adoptive parents as well as with those of the natural parents ... ... ... 889

his sapinda relation, extends to how many degrees, with the members of particular families in particular cases ... ... ... ... ... ... ... 892, 893

his impurity on the birth and death of the members of the family of his adoptive father (in the case of his being absolute dattaka) and of those of the families of his natural and adoptive fathers (in the case of his being a Dvyámushyāyana, and Shrāddha &c. performable by him ... ... ... ... ... 893—896 et seque.

his initiatory ceremonies to be performed by the adopter 876 et seque:

the non-performance of any of the unessential ceremonies does not render his adoption invalid 764, 872 et seque.

entitled to inherit from his adoptive father and mother, and not from his natural parents 905, 915, 921, 922, 924, 925

made after his adoptive father's death, has all the rights of a posthumous son ... ... 907, 935 et seque.

may lawfully bind himself not to take possession of the estate until after the adoptive mother's death and forfeit it on breach of the condition ... ... ... ... 916

his to-be adoptive mother can hold her late husband's estate like a pregnant widow for the behoof of her to-be adopted son, and since his adoption until his attaining majority, as his mother and guardian ... 907, 942, 943
ADOPTED SON (Continued.)

even before his adoption, a sale or other disposition of his to-be father's estate will not be valid, unless made under circumstances of inevitable necessity, or in a calamity affecting the whole family or for the good of the adopted ... 907,924,935,939,943

his to-be adoptive mother, if authorised by her husband, may exercise any power over the property left by him, even though she had permission to adopt ... 908,924,943

is not precluded from questioning acts done by his adoptive mother where she is not authorised as above ... 908,943

is liable for the debts contracted by his adoptive mother under a necessity or in a calamity affecting the family or for his benefit ... 908,942,943

is entitled to inherit from the adoptive grandfather also, provided the adoption was made with his assent or without his opposition ... 911,944,848

entitled to be invested with the empire provided there be no legitimately begotten son subsequently born, otherwise only to his share therein ... 912

takes one-third in partition with the adopter's legitimately begotten son born after his adoption, and each of such sons takes double the quantity of his share ... 909,910,917,922

entitled to inherit from the collaterals of the same race, but not from a relation of a different race ... 952 et seq. 958,961,964,967,970.

of a sister, takes a seventh, as co-heir with three sons of another sister. (But See pp. 952—958 et seq.). ... 917

of a brother, receives half the share of another nephew ... 1011

his relations of a different race as well as those of the same race, do, however, inherit from him ... 971,973

if the son of a deceased son, gets in partition with his uncle, the portion of an adopted son, and the whole in default of him ... 974

his legitimately begotten son is entitled to an equal share with such son of his grandfather by adoption, in default of such uncle he is entitled to the whole property ... 974

his great grandson also has the same right ... 975

his heirs succeed collaterally has well as lineally ... 975,977

of a Sādādra, inherits in equal shares with legitimately begotten son during the adopter's life time, but gets half of that son's share after the adopter's death ... 979
ADOPTED SON (Continued)

if in the Dvayamushayana form, his succession how to be regulated ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ......
ADOPTION (Continued.)

should and can be made by any person of any sex or in any of the four conditions of life (grihī &c.) who is destitute of a son, son’s son and son’s grandson (in the male line) capable of performing the duties of a son ... 736, 737, 738, 743, 744, 754, 755, 757

should be made even though there be a brother’s son or a near relation to perform the obsequies 740, 741, 743, 758

can be made by a wife or widow on the death of her husband’s legitimately begotten or adopted son, provided she had authority from him to that effect 761, 796, 794, 799, 967

can and should be made not only by a married man with or without a wife, but also by a bachelor, as well as by impotent and the rest, though incapable of inheriting, as also by a man who is not a householder ... 754, 755

must not, however, be made by a man afflicted with leprosy or other sinful disease before he has performed the expiatory penance ... ... ... 757, 780

can be made by a man though possessed of a son, son’s son or son’s grandson (in the male line) incapable of performing the duties of a son ... ... 753

cannot be made if a son already adopted is alive and free from any defect ... ... 759, 767, 802

can not be made by a woman while there exists a son of her husband by another wife. ... 737, 743, 799

cannot be made by a woman, except under authority from her husband, who can permit her to adopt when himself is unable so to do ... 748, 762, 776, 781, 811 et seq.

verbal authority for—valid like a written one ... 791, 792, 777

agreement purporting gift or acceptance of a son in—is not also necessary to be in writing ... 781, 792, 777

cannot be made by a woman under an illegal authority, or by putting forced construction thereto 762, 766, 799, 811, 812

can be made at any time when a fit boy may be had, there being no limitation to adoption, it should not, however, be delayed till the death of the last male member of the husband’s family 768, 781, 784, 811 et seq. 92

a suit to set aside—of a second adopted son must be instituted within 12 years from the cause of action ... ... ... ... ... 993

may be made even by an infant wife under authority from, and as substitute for, her husband ... 769, 770, et seq. 778

as a religious act, may be made by a minor after a certain age ... ... 770 et seq. 797, 798
ADOPTION (Continued.)

simultaneously made of two or more sons by different wives, or widows, customary and lawful, but if made one after another, then only the first is valid 759, 767, 778, 781, 784, 802

more than one made at the same time by one wife, does not hold, the one made secondly, invalid ... ... 778

made for the second time, after the death of the son first adopted, valid ... ... ... ... ... 761, 967

not made by a widow, even when a fit boy was available, renders her guilty of discontinuing the presentation of the oblations &c. and making the lineage extinct ... ... ... ... ... ... 768, 769

a son can be given in—by the father of several sons of his own authority, and by the mother with the assent of her husband, to a person of the same caste, destitute of son, son's son and son's grandson (in the male line) and not a prohibited relation 821, 831, 832, 842

a son can be given in—by the mother without her husband's consent, when the father is dead or have emigrated ... ... ... ... ... 524, 825

the gift of a son in—by one who has two sons, or a son and another son's son, is valid though not proper,—the adoption of such son is seen in practice, and not declared invalid by the dispensers of justice. ... ... ... ... ... ... 823, 822

of an only or eldest son should not be made, but when made is not invalid, though improper ... ... 829, 983, 989

of an only son (in the Dvāyamushyāyana form) proper as well as valid ... ... ... ... ... ... 846, 852

cannot be made of a boy with whose (natural) mother or father the adopting father or mother was prohibited to contract a marriage or to have carnal knowledge of ... ... ... ... ... ... 831, 832, 842

of a brother, paternal or maternal uncle, a daughter's or sister's son is prohibited ... ... ... ... 832, 842

of a sister's or daughter's son is, however, allowed among the Śādram ... ... ... ... ... ... 832.

of the nearest kinsman preferable to the nearer, of the nearer to the near, of the near, to the distant, and of the distant to a stranger. The acceptance of a boy in adoption while one preferable is available, does not, however, render the adoption invalid... 834, 835, 836, 837, 838, 840
ADOPTION (Continued)

in the Anitya (incomplete) Dvayamushyayana form bears connection with the adopter to the end of the life of the son adopted and does not extend it to his children ... ... ... ... ... ... ... ... 848

of a whole brother's son may be made in the Dvayamushyayana form by two or more uncles ... ... ... ... 851

proper age for ... ... ... 820,856,857,858 (notes) 862

of a boy of the Brāhmaṇa, Kshatriya, or Voishya tribe, must not be made after his investiture with the sacred thread (upa-nayana, ) and of the Shūdra tribe after his marriage ... ... ... ... ... ... ... ... 862

of a boy may be made before the secondary season of his upa-nayana, if he was not initiated with that ceremony in its primary season ... ... ... ... ... ... ... 861

form of. ... ... ... ... ... 866 et seq. 920

essentials of ... ... ... ... ... ... ... 871 et seque.

effects of ... ... ... ... ... ... ... 887 et seque.

made without the performance of the religious rites ordained for the purpose, does not entitle the adopted to inherit the adopter's property, but only to receive maintenance ... ... ... ... ... ... ... 764,982

the non-performance of any of the unessential ceremonies of—does not render it invalid ... ... 764,872,920

made of a boy from a different caste, invalid, and the boy so adopted has no pretensions to the adopter's property ... ... ... ... 821 et seque. 828

indefeasible ... ... … … … … 983—987

suit to set aside—for a second son must be brought within 12 years from the cause of action ... ... ... ... 999

ADULTERY,

a criminal offence, not a civil one, whence an action brought by the husband of the adulteress is cognizable if it is for punishment of the adulterer, and not for damages ... ... ... ... ... ... ... 679 et seque.

not given up, and expiated by penance, at the time, causes forfeiture of the right to inheritance as well as maintenance ... 28,32,37,375,390,730,1015,1016,1025

does not, however, cause a woman to forfeit her peculiar property ... ... ... ... ... ... ... 730

ADULTEROUS woman,

forfeits her right to maintenance as well as to inheritance ... ... ... ... 28,32,37,37,375,390,730,1015,1019,1025
ADULTEROUS WOMAN (continued)

previously committing adultery, which remained unexpiated by penance, forfeits also her right to inheritance and maintenance, but she who ceased to be adulterous and co-habited with her husband, or expiated or was about to expiate the sin by penance before the time of succession, does not forfeit her right, as well as she who became adulterous after inheriting property or obtaining maintenance, unless the crime were such as to cause degradation by loss of caste ...

ADVERSE POSSESSION. See possession.

AGE FOR ADOPTION. See adoption.

AGENS OF THE WORLD. ... ... ... ... 3 pref. 999 (note.)

ALIENATION, (see gift, sale, proprietor, and power.)

by a female of the property inherited by her, or received for maintenance. See widow, daughter, mother and grandmother.

of deposits for delivery or use, bailments, pledges, things borrowed for use, and, without a legal cause, of joint property exceeding the donor's share, and of Stri-dâna without distress, invalid, ...

by the owner of his property by will &c., valid, even to a stranger without the consent of the next legal heirs, ...

by the owner, or in his absence by any person belonging to the family, for the support of the family, or for the performance of indispensable duties, moral, as well as valid ...

by a woman of property acquired by gift, valid, but not of that which is acquired by inheritance (see widow) ...

by a man of his separate or sole estate, or of his share in the joint estate, always valid ...

by a man of his co-parcener's share in the joint estate, valid, when made in a calamity affecting the family, or for its maintenance, or for the performance of any indispensable duty, if the co-parcener's consent could not be obtained for a proper cause ...

of the undivided and divided property, according to the law as current in the North-western and Southern schools ...

of the entire property to a married daughter, legal, even though a wife and maiden daughter are in existence ...

... ... ... ... ...

page.

1016

613

552, 553, 554, et sequ. 563 et sequ.

617

632

552 et sequ.

597 et sequ.

1044

571
ALIENATION (continued)
of the whole estate, valid, though there is a sister and sister’s son. ... ... ... ... ... ... 572
by a widow of her husband’s acquired property with his recorded consent, valid ... ... ... ... 574

ALLOTMENT of a share,
to a co-parcener appearing after partition ... ... 546
to a sonless wife, to the mother and paternal grand-
mother, under what circumstances, and for what pur-
poses. ... ... ... ... ... ... 424, 427, 480, 491, 484

ANCESTRAL property, defined and distinguished from self-
aquired property ... ... ... ... 429, 430, 431, 432

ANCHORET. See yati or jati.

ANITYA DWÁMUSHAYÁNA (incompletely son of two fa-
thers.) ... ... ... ... ... ... ... ... ... 847

APOSTATE. See outcast.

ARSHA, one of the eight forms of marriage... ... ... 648—650

ASCERTAINMENT of partition, how to be made...540—545 et seque. 582

ASCETIC. See yati or jati.

ASSOCIATE in holiness, succeeds in default of a preceptor, virtuous pupil and spiritual brother... ... ... ... ... 312

ASURA, one of the eight forms of marriage ... ... ... 648—650

B.

BAREND DAUGHTER, not entitled to inherit her father’s property, but her mother’s stri-dhan only, 169, 176, 179, 710, 715, 718

BASTARD. See illegitimate issue.

BENARES SCHOOL and the law books preferably respected there. ... ... ... ... ... ... ... 12, 18 pref.

BENGAL SCHOOL and the law books preferably respected there ... ... ... ... ... ... ... ... 12—18 pref.

BETROTHMENT, constitutes marriage, which is not irrevo-
cable without the performance of the fixed cere-
monies. ... ... ... ... ... ... ... ... ... 645

BIGAMY, prohibited, unless it were for any of the recog-
nised or allowable causes ... ... ... ... ... 672 et seque.

BIRTH,
two fold, conception and actual production ... ... ... 252
of a preferable heir, if conceived at the time when the succession opened, must be awaited ... ... ... 3, 7, 239, 860

BLIND FROM BIRTH, excluded from inheritance ... ... ... 997
not being considered pure ascetics (yatis,) their succession is regulated by custom.

Boiraghis.

Boo's, on the law of inheritance preferably used in each of the schools of law and philosophy on the law of adoption

Brahma, Self-existent

Brahma, the best form of marriage now prevalent among the Hindoo gentry

Brahmana, the first and sacerdotal caste, his profession &c. his property not escheatable

Brahmanas, learned in the vedas, endued with other qualities, and inhabiting the same village inherit in default of men who are descended from the same patriarch; in default of which Brahmanas of the same village, a like Brahmana of another village, in his default, a common Brahmana of the same village, in his default, such Brahmana of another village, succeeds

Brahma-chârf. See student in theology.

Brother, inherits in default of the mother of the half blood, inherits in default of one of the whole blood of the whole blood, succeeds simultaneously with a brother of the half blood to an undivided immovable estate his own heir inherits on his dying after being vested with the inheritance if two or more in number, and all of the whole or half blood, but re-united and not re-united, the re-united succeed to the exclusion of the un-reunited if of the half blood re-united, and whole blood unreunited, they succeed equally in all other cases, the uterine excludes the brother of the half blood whether of the whole or half blood, re-united or not so, excludes a brother's son.
Brother (continued,)

gets a share of the acquisition made by his brother
by the use of the joint property or his own funds
or personal aid or both or by the use of his father's
funds or personal aid or both ... 417,450,463, et seq.

Brother or co-parceuer, left to support the family of one
gone abroad to study science or acquire wealth, should
share in the acquisition of the latter, but he is not
entitled to a share merely for looking after the
family ....... ...

Brother's daughter's son,

has no heritable right according to the Dāya-bhāga,
but according to the Dāya-krama-sāngraha and
Jagurnath's Digest .. ...

Brother's grandson

succeeds in default of a brother's son of the whole or
half blood ... ...

here also the distinction of the whole and half blood,
and that of the re-united and un-reunited parceny
must be observed ...

Brother's son,

though considered equal to the son, has not an equal
claim with a brother ...

inherits on failure of heirs as far as bro-
ther of the half blood, and excludes those after
him ... ...

of the half blood, succeeds after a brother's son of the
whole blood ...

of the whole blood and re-united, succeeds in prefer-
ce to one not re-united ...

of the half blood re-united, succeeds equally with
an un-reunited whole brother's son, and excludes a
half brother's son not re-united ...

whether of the whole or half blood, or by adoption,
excludes a brother's grandson in general ...

if by adoption, gets a half of what another nephew
takes ...

Brother's sons or grandsons, whose fathers or grand-
fathers are dead, inherit per capita in conformity with
the rule regarding the relation of the whole blood
and that of the half blood, and the re-united and dis-
joined parceny...

Brother's widow, entitled to maintenance and not to in-
eritance ...

page.

502,503 (note,) 520

266,267,271,276,1049,1050

209,210

207,208

208,213

209,213

210,211,215

211

218, 182, 183
BUILDING, erected by a co-parcener on the ancestral (undivided) land with his own funds, is not divisible among the co-parceners, who, however, are entitled to a similar land equal to their shares (see partition)...

C

CASTES (of the Hindoos) .. .. .. .. .. 1032
primitive or original .. .. .. .. .. 1032
mixed (Sankara) in the regular order .. .. .. 1032
mixed (Sankara) in the inverse order .. .. .. 1032
of the Shádras of this country with the especial profession appropriated to each .. .. .. 1035 et seq.

CAUSE OF ACTION,
for a reversioner arises on the death of the then possessor or at the date of waste actually made, or adverse possession being taken of the estate (see limitation) .. .. 58(note,7)4,112,120,121,122,1052,1053,121,122,1052,1053,

CAUSE of heritable right, (see heritable right.) .. .. .. 2,5,6,7,234,240,253,260,261

CEREMONIES,
initiatory .. .. .. .. .. .. 365 et seq.
of marriage .. .. .. .. .. .. 647 (note,6)50
of adoption, .. .. .. .. .. .. 764,866 et seq.
essential for adoption .. .. .. .. 764,871 et seq.
un-essential (for adoption,) if not observed, do not render the adoption void and invalid, .. 764,872, et seq.
to be performed for the adopted .. .. .. 879
or rites to be performed by the adopted .. .. 896 et seq.
not considered essential in the adoption of a Shádra (but see pp. 873, 876) .. .. .. .. 919

CHARGES ON THE INHERITANCE,
comprise payment of debts, the performance of the obsequies &c. of the late owner, initiation of his son and daughter, and maintenance of those who must be supported (to be seen under separate heads) .. 342 et seq.

CHASTITY,
a requisite condition for women to inherit, and get maintenance (see adultery) 26—29,37,155(note,371,375,390,1025

CHELÁ, (disciple) entitled to inherit from his gooroo .. 327 et seq.

CHÁRÁ-KA RANA, (tonsure)
primary season for .. .. .. .. .. .. 860
CIVIL DEATH, the different sorts of (see retirement from the world) ... 9,10

CLASS, (see castes.)
in marriage and adoption must be the same ... 656,821,828

COLEBROOKE, H. T. (see opinion) his works and authority ... 24,26 pref. 568 (note.)

Cousins,
paternal, and of the whole blood and half blood, inherit successively in default of the father's half brother ... 291
maternal, succeed after the maternal uncle ... 297

COGNATE, (bandhu) as defined by Jiváta-váhana Srí-krsna and Rághu-nandana ... 297,659 (note,) 682,683
inherits from his deceased cognate, whether adopted or not ... 297,971,970
does not inherit, if he is so by adoption ... 958,961,964,970

CO-HEIR. See co-partener.

COMMENTARIES,
on the Institutes of Manu and other legislators ... 9—11 pref.
on the Dáya-bhága ... 16 pref.
on the MITÁKSHARÁ ... 13 pref.
on the Dattaka-mimónsá and Dattaka-chandriká ... 20 pref.

COMMENTATORS, their names, works, &c. ... 9,13,16, pref.

COMMON PROPERTY, improved and augmented, does not entitle the augmentor to a larger share ... 469,478

CONCEALMENT OF EFFECTS IN PARTITION, how to be dealt with ... 538

CONCEPTION,
of a preferable heir at the time of the owner's death bars the succession of another ... 3,4,7,238,239,260
entitles the child to inherit when born alive ... 260—262
in the eye of the Bengal law, is the same as birth, only that the birth of the infant must be awaited ... 6

CONCLUSION, arrived at with reference to the discrepancies existing in the law books respected in Bengal ... 274

CONTRACT,

law of (see subtraction of what has been given) 600—640
admitted legal opinions on various kinds of 641 et sequentiae
prior has the greatest force in gift, pledge and sale; in all other matters the latest act prevails ... 603
CONTRACT (continued)
entered into by the managing or any member of the family for the family, or for indispensable religious purposes, valid and binding upon the other parcener
or parceners (see debts) ... ... ... ... 597,598,599
who are disabled to enter into ... 397,624,641, et seque.
by the wife or another on behalf of the head of the family, when absent or under disability 360—362,402 et seque.
entered into by an outcast or one degraded, or one who has retired from the world, is void ... ... 641

CO-PARCENER,
his power when separated (see alienation) ... 552 et seque.
his power when not separated (see alienation and debts) ... ... ... ... ... ... 592,593 et seque.

CO-PARCENERS,
to what degree entitled to be re-united ... 219 et seque.
to what degree and under what circumstances entitled to share on appearance from abroad after partition ... ... ... ... ... ... 546 et seque.

CORPORATION, held to be real property ... ... ... ... 549

COVERTURE, (see wife) ... ... ... ... ... ... 641
effect of ... ... ... ... ... ... ... 2 (note) 641

CREDITOR. See debts and partition by brothers

CRIMES,
in the highest or excessive degree, defined ... 998,1007
causes degradation or excommunication if once consciously or twice unconsciously committed ... 998 et seque.
the other effects of ... ... ... ... ... 1006
in the second degree, or nearly equal to the highest degree, defined ... ... ... ... ... 1003
in the third degree, defined ... ... ... ... ... 1000
causes degradation by the repeated commission of ... ... 1000

CUSTOM OR USAGE,
if immemorial, invariable and not repugnant to the vedas, supersedes the general maxims of the law ... 229, 314, 315, 316,317, 318, 319, 320, 321, 322
does not supersede the general maxims of the law unless clearly proved to be ancient and invariable, 315,1050
the prevention of the enforcement of—by violence or undue means, should not, however, be held to be a breach of such usage, or establishment of a new one 315, 325
Custom or usage (continued.)

valid in Calcutta, if existing from 1773, and so in the mutussil, if existing from 1793 ... ... ... 314 (note.) established by agreement of the people and not repugnant to the vedas and the codes of law, should also be respected and observed ... ... ... 312 regulates the succession to the property of the Mohantas, Boiraquis and the like Devotees ... 323,—327, 330 of the mohantas is, that whoever out of the chelas (disciples) is selected by his spiritual precepter, will succeed at his death, the selection being confirmed by the Mohantas of the similar institutions in the vicinage, who convene for the purpose of installing the heir to the Guddy ... ... ... 323, et seq. 330

D

Dattaka (given) son. See adopted son in the Dattaka form.

Dattaka-chandrikā, one of the two paramount authorities on the law of the adoption ... ... ... ... 19 pref.

Dattaka-mimānasā, one of the two paramount authorities on the law of adoption ... ... ... ... 19 pref.

Daughter,

cannot claim while the mother lives, unless the mother do some act tending to defeat her right ... ... ... 35 unmarried, succeeds to the exclusion of the married daughter, and the one bearing a son or likely to have a son, inherits to the exclusion of the barren and soulless widowed daughters, who are not entitled to inherit ... ... 165, 168, 169, 172, 173, 174, 176, 177, 178, 179, 184 having no son, but a female issue or a son’s son, or being a childless widow, does not inherit ... ... 169, 177, 184 heritable right once vested in, does not become extinct until her death, natural or civil (see heritable right.) ... ... ... ... ... ... ... ... ... ... 170 if not entitled to inherit, is entitled to maintenance from her-father’s estate, provided she be destitute of the means of support (see maintenance) ... ... 170, 176 if many in number and competent to inherit, they share equally ... ... ... ... ... ... ... ... ... ... ... 170 in default of one of them, the other succeeds, if not disqualified ... ... ... ... ... ... 170, 171, 174 is not competent to alienate the inherited property without legal cause or necessity; at her death, the estate goes to her father’s heirs ... ... ... 98, 171, 226
on the death of—who inherited in the maiden state, and died leaving a son, the estate goes, according to a recent decision, to her own son (see however p. 167,168) ... ... ... ... ... 1062
unmarried, is entitled to her marriage expense, and maintenance until she is provided with a husband 365,372,1015

doughter's son,
inherits in default of a qualified daughter or daughters ... ... ... ... ... 179,182,183,184
if numerous, inherit equally per capita, and not per stirpes ... ... ... ... ... 181, 184
if by adoption—does not inherit from his adoptive maternal relations ... ... ... ... 182,958,961,970
on his death after succession, his own heir inherits the property succeeded to by him ... ... ... 181, 185
cannot claim his maternal grandfather's property while his mother is living ... ... ... ... 183

dāya-bhāga of Jimāta-vāhana, the first law book which established the doctrine of the Bengal school ... 15 pref.

dāya-krama-saṅgraha, a Bengal law book, to which preference is given by the modern writers ... ... 16 pref. 274

dāya-tattwa, a law tract respected after the dāya-bhāga ... 15 pref.

deaf from birth, excluded from inheritance ... ... 997,1003,1005

death,
includes natural as well civil as death; viz. degradation for sin, state of travelling devotee, hermit, and resignation to, and extinction of, the worldly affections, or retirement from the world ... ... 9,10,78,109,123,637

presumed ... ... ... ... ... ... 10,12,13
civil ... ... ... ... ... ... 9,10,637

death-bed gift, valid, if the donor was then of sound disposing mind (see gift.) ... ... ... ... ... 32, 603

debts,
of the late owner, be that a father, mother, grandfather or any other relation, should be paid by the heirs taking his or her estate, and before dividing the same ... ... ... ... 342,343,350,354,356

may be apportioned by the heirs with the consent of the creditors, or must immediately be paid by the former ... ... ... ... ... ... ... ... 343

follow the assets into whosoever hands they come 342 (note.)
Debts (continued.)

assets are liable for—and one is not legally bound to pay the debts of his ancestors or any relation, unless he inherit his property, and he is liable to the extent of, and each heir in proportion to, the property received by him... 345, 350, 351, 3

of the father, are undoubtedly to be paid to the extent of his assets, and not from the property inherited from any other...

of a person long absent in a foreign country, must be paid after twenty years, by his son, grandson, or the person holding his assets...

of a person incapacitated by old age or chronic disease, or civiliter mortuus, must be paid by his son or another who holds or manages his estate...

of the grandfather, should be paid by his grandsons inheriting his property by reason of their father's death, natural or civil; they should also pay the just debts of the father...

of the great grandfather, are not positively to be paid by the great grandson, unless he takes his assets...

of a divided father, should be paid by the son (if any,) begotten after partition...

of a missing person, must be paid by those in the possession of his assets without waiting twelve years for his reappearance...

of an ascetic follow his assets in the hands of his representatives...

morally payable by sons even though they do not inherit the assets...

not even morally payable, if contracted for drinking or any other unlawful purpose...

contracted for the joint family by any member thereof, must be paid out of the joint estate, by all or any of the co-partners who may be amenable though the borrower be dead or very long absent abroad...

contracted by undivided parncners must be paid by any one of them who is present and amenable, and those of the father by any of the brothers before partition, but after partition they shall severally pay according to their shares of inheritance...
Debts (continued,)
contracted by any person (even a slave) connected with the family, for the support of the family or during distress, or while the principal was dis-abled, seized or afflicted with disease, or in consequence of foreign invasion, or for nuptials of his daughter, or funeral rights, must be discharged by the chief or head of the family, even though it were made without his consent...

358, 359, 642

contracted by the husband, son, father, or wife, shall by no means bind the wife, mother, son or husband, unless the same were for the sake or support of the family...

360, 362

contracted by a partner or co-partner, since deceased, bind the survivors, if the sum borrowed were expended for the use of the joint family or joint trade...

364

Deccan, Drāvīra school, q. v.

Declaration,
for the adoption of a son by a widow cannot be made by the Court of justice...

368

Deduction,
of a twentieth part &c. formerly allowed to the eldest or elder brother, obsolete and disallowed at the present (Kali)age...

16,17,464—457

never allowed among the shādras...

16,17,460

Deed, executed by a man in his last illness should be upheld, if he was of sound disposing mind at the time of execution...

600 (note, 643, 606

Degradation,
how caused...

998 et seques.

causes exclusion from inheritance, unless the sin is expiated by penance...

9,997 (note) 1001, 1017

Descendants,
of the same ancient sage, who are inhabitants of the same village, inherit in default of the fellow student in theology...

308

of the same patriarch, who inhabit the same village, inherit in default of the descendants from the same ancient sage...

3085

Degraded,
for sin (and unexpiated by the penance) is excluded from inheritance...

9,997 (note) 1001, 1017

DharmA, usage, custom, rule, law...

31

DharmA-shāstra, (sacred science, whence) law...

1 pref.
DIFFERENCE, of caste, effect of ............... 821,828,1038
DIFFERENT or foreign country, defined ........ 546
DIGESTS,
of law, names of, and necessity for ........ 11—17 pref.
DIGEST-WRITERS, names and authority of...... 12—17 pref.
DISCREPANCIES, existing among the books of the Bengal
school ....................................... 262 et seque.
DISEASES, sinful, or caused by particular sins .... 1006—1008
DISPOSITION. See alienation, gift, and sale, see also pro-
prietor and his power.
DISPOSITION-TESTAMENTARY. See will.
DISTANT-KINDRED. See sakulya.
DIVISION. See partition.
DIVORCE or desertion,
may take place for what fault or faults ........ 675,1025
on account of adultery does not subject the woman
to the loss of her peculiar property........... 730
DONATION. See gift.
DONEE, (see gift)
may sue the donor for dispossession ............ 608
in actual possession, is not accountable to the previous
assignee ....................................... 608
DOUBLE SHARE, receivable by whom and under what cir-
cumstances (see acquirer and father)
DRÁVIRA school, and the law books respected there .... 14 pref.
DUBIOUS PARTITION, ascertained ............... 540
DUMBS, excluded from inheritance.............. 173,997
DURESS, (force or fraud,) vitiates a contract .... 642
DUTIES,
of widowhood .................................. 24,25 (note,) 53—56
of the husband to his wife, and of the wife to her
husband ....................................... 674—679
of a guardian to his ward ........................ 402 et seque.
of the son, adopted son or heir. See charges on the
inheritance, debts and adoption .................
DWÁPARA,
the third age of the world according to the Hindoos
(see yuga, or ages of the world.) .............. 3 pref.
DHYÁMUSHYÁYANA, son of two fathers, ....... 846 et seque.
incomplete (Anitya) ......................... 847,848
complete (Nitya) ............................ 847,848
Dwyámushváyana (continued,)
effects of adoption in the form of .. 889,891, et sequ.
inherits from both fathers .. 979
relation and succession of his children .. 890,981
proportion of his share in partition with a son born
after his adoption .. 980
duties of .. 897 et sequ. 904,905
entitled, to maintenance from the adoptive grandfa-
ther's estate, if adopted by persons blind, lame or
having any other defect or defects causing exclusion
from inheritance, but to the estate (if any) of adoptive
father .. 981,982

Effects,
of adoption .. 887 et sequ.
of illegal marriage .. 670

Effects, (property, acquisition, &c.)
liable to partition .. 500 et sequ.
exempt from partition .. 503 et sequ. 526,529
concealed at the time of partition and afterwards dis-
covered, to be divided .. 538 et sequ.
ill distributed, must be divided again .. 439

Elder or Eldest brother of son, defined 454 (note.) 458,666 (note.)
not entitled to a larger share by right of primogeniture 16,17,457,459
should get the whole immovable property, if there is
a custom to that effect (see custom)
may be given and taken in adoption, and such adop-
tion is valid, though immoral .. 859,983, 989

Enemy to his father, (defined.) .. 1009
excluded from inheritance .. 997

Escheat, for want of heirs among the Kshatriya, Vaisya
and Shūdra tribes (see Brāhmaṇa) .. 309

Evidence documentary, stronger than parol .. 44

Excluded from inheritance,
who they are .. 997
the persons excluded from inheritance are, except the
outcast and his issue, entitled to maintenance .. 1012
their sons are entitled to inheritance, provided they
be free from the defects causing exclusion .. 1014
xxii.

Excluded from Inheritance (continued)
their daughters must be supported so long as they be not given in marriage, and their childless wives maintained for life, provided they remain chaste ... 1015

Exclusion from Inheritance, cause or causes of 993 et sequ.

Excommunication. See degradation.

Existence of an heir, indicates also his natural state ... 3

Expelled from society, (defined) ... ... ... ... 1009
excluded from inheritance ... ... ... ... 997

Expiation, or expiatory penance,

persons afflicted with any of the sinful diseases (except ulcerous leprosy) or committing a heinous crime, forfeit the heritable right only when they suffered the disease, crime or sin to remain unexpiated by penance, or are averse to expiation, and not for that which has had its existence after the vesting of the right ... ... ... ... ... ... 9,1016,1017,1039

persons committing a crime or sin causing degradation by loss of caste unredeemable by penance, forfeit the right of property whenever the same is committed, and cannot regain inheritability even by expiatory penance ... ... ... ... ... 1017

adulterous women forfeit their right of property as well as maintenance, unless they previously ceased to be so, and performed the expiatory penance ... ... ... ... ... 371,375,390,1016,1017,1023,1025

Extent of a Proprietor's power,
in divided property (see will, gift and alienation.)549,552, et sequ.
in undivided property ... ... ... ... 592,593 et sequ.
in his co-parcener's share in the joint property ... 597 et sequ.

Extinction of worldly affairs, causes extinction of heritable right (see retirement from the world.) ... 10,78,109

F

Factum valet quod feiri non deduit, ... ... ... ... 552

Family,
migrating from one to another country, is governed by what law as respects the succession to inheritance (see Migration.) ... ... ... ... 334—341

Family joint,
effect of. See joint family.
power of the head of—over the joint estate under especial circumstances ... ... ... ... 597,598
FAMILY-USAGE or CUSTOM. See custom.

FATHER,

inherits on failure of a daughter's son, ... ... 186,187

can reserve for himself any portion of his self-acquired property in making the partition thereof ... ... 418

can take two shares and no more in the partition of the ancestral property which he cannot unequally divide ... ... ... ... ... ... 418,433,434

etitled to a moiety or two shares of his son's acquisitions under different circumstances ... 448,449,450,451

can give, sell or otherwise dispose of his possessions, whether inherited or acquired, real or personal, without the consent of his sons, and he can by will, prevent, alter or affect their succession to such property ... ... ... ... ... ... 552 et sequ. 568 et sequ.

FATHER AND SON,

severally indicate any relation, the father indicating the former owner, and the son, the successor. ... ... 3

FATHER'S DAUGHTER'S SON, (sister's son,)

succeeds on failure of the brother's son's son, and excludes the persons after him.--- 224,226,228,230,231,232,233.

by a half sister, has equal pretentions with a whole sister's son ... ... ... ... ... ... ... ... ... ... ... ... 225,229

entitled to succeed, if he survived the owner or his female heir, or remained in utero, at the time of his or her death. ... ... ... ... ... ... ... ... ... ... ... ... 234,240,1052

FELLOW STUDENT in theology, inherits in default of the pupil in theology, ... ... ... ... ... ... ... ... ... ... ... ... 308

FEMALES,

inheriting property are incompetent to alien the same without a lawful cause or legal necessity; after her death (natural or civil,) it devolves on the heirs of the former owner (see widow, daughter, and mother)... ... ... ... ... ... 4793,157,171,189,199,200

except the widow, daughter, mother, grandmother, and great grandmother, do not succeed to the ordinary property ... ... ... ... ... ... ... ... ... ... ... ... 249

except the daughter and mother, do not inherit the Sh-dhan ... ... ... ... ... ... ... ... ... ... ... ... 733

of the family must be maintained ... ... ... ... ... ... ... ... ... ... ... ... 27,50

FœtUS,

how to be dealt with ... ... ... ... ... ... ... ... 3,4,6
Fortus (continued,)

when born alive, has the rights of a posthumous child 7,334,260,531 et sequ.

Force, (duress or fraud,) vitiates a contract 642

G

Gift, (see alienation and sale,)

requisites for the validity of 600

by word of mouth is as good as by a deed 600,602

verbally made, is valid provided the donor was of sound mind at the time 610

verbally made the day before the donor's death, valid, he being at the time in full possession of his senses 610

of one's own acquisition, though made in his death-bed, valid, if he was at the time of sound mind 604

made during severe or mortal illness, or in one's death-bed, valid, provided the donor was of sound mind at the time 32,603

verbal but conditional, holds good on fulfilment of the condition 602

do not destroy the donor's right of property unless it is accepted by the donee 601

to a minor, valid, provided on his coming of age he exercised ownership over it 605

conditional, rendered null and void by the non-fulfilment of the condition 606

may be taken away on the donee's violation of the conditions made 638

conditioned to take effect after the death of the donor, does not go to the heir of the donee, if the latter died before the former 607

conditional, is rendered null and void by the omission of the donee to perform all the conditions stipulated by the donor 606

cannot be retained in the hands of the donor 608

prior, invalidates a subsequent sale after the lapse of fifteen years 609

made under influence of lust or anger, or through mistake, in pain or jest, or under impulse of fear, or during madness, or by one grievously disordered, disturbed in mind, intoxicated, or afflicted with grief or the like, is considered null and void 608,641
GIFT (continued.)

gratuitous, of a wife and son without (their) opposition, of the whole of one's share, or of his sole estate if he have issue alive, is immoral, though valid, of a son for adoption, and of joint property exceeding the donor's share, or of his sole property, and of his wife's property, in a calamity affecting the family, or for the support of the family, or for performance of indispensable duties, valid, as well as moral ... 613

of property, thereby distressing the family, immoral, though valid ... 611, 613

of a landed estate, or rāj (principality,) to one relation, according to the prevalent usage, to the exclusion of another, valid ... 314, et sequ. 554, 555, 617 et sequ.

of a thing, or property or money, as wages, or as a nuptial present, or as a present to a worthy man, or as an acknowledgment to a benefactor, or for pleasure, or from affection, favor or friendship, is irrevocable ... 621

made by a man agitated through fear, anger, lust, grief, or by pain of an incurable disease or in jest, sport, or excessive joy, or by a minor, idiot, or one intoxicated, insane, diseased, or not in the natural state of mind, or a person not his own master, or by an outcast, or by one extremely old, grievously disordered, or without authority, or in consideration of work unperformed, or through any fraudulent practice, or as a bribe, or by mistake, or to a bad man mistaken for a good one, or for an illegal act, void, as well as illegal ... 624

made by a diseased man for religious purposes, or by a minor as recompense for the performance of religious rites, valid ... 629

by a mother, of a firm inherited from her son, to a daughter, invalid, which on her death goes to her son's heir ... 630

by a daughter, of her inherited property to one son's son, to the exclusion of such grandson's brothers, invalid ... 630, 631

by a widow, of her husband's property to a stranger notwithstanding she was permitted to adopt a son, invalid ... 632

by a woman, of her own property, to a stranger, is good if she have no heirs ... 633
Gift (continued)

of the entire property, to a married daughter, legal, even though a wife and maiden daughter are in existence.

of the whole property, valid, though there is a sister’s son (see proprietor).

of a paternal estate, valid, without the consent of the sister’s son.

of a joint property to the extent of the donor’s share, valid in Bengal.

by a co-parcener of his share in the joint estate, valid according to the law of Bengal.

Glosses. See commentaries.

Gooroo, who is an śākārja or preceptor in the Vedas, inherits, but not the Gooroo who teaches to worship any of the Gods or Goddesses having shape and form 307.

Gotra, race, or the direct male line.

one of the same—not illegible to marriage. 657,66

Government revenue, payment of, is considered one of the legal necessities, to be discharged by a female inheritrix, as well as by a female guardian, natural or appointed, and binding on the reversioner 78,1.

Grandfather (paternal,)

inherits after the father’s male issue down the daughter’s son.

should in partition give a share to his grandson or great grandson, whose father or father and grandfather are dead, in the same manner as he should give to his son or sons.

takes a share in his grandson’s acquisition effected by the use of his funds.

his descendants down to the daughter’s son, inherit successively after him.

Grandfather (maternal,)

inherits after the paternal great grandfather and his descendants down to daughter’s son.

Grandmother (paternal,)

inherits after the paternal grandfather.

cannot dispose of the property inherited or received in partition without an allowable cause or legal necessity (see females).

entitled to a share on partition of her husband’s estate by her grandsons, or grandson and the rest.
GRANDMOTHER (continued)
the proportion of the share of—in the case of there being unequal number of sons of each son ........ 491 et seq.

GRANDSON (in the male line,) succeeds in default of his father, and with his uncle, if any ........ 19,20,21,463

GREAT GRANDFATHER (paternal,) and his descendants including daughter’s son, inherit successively after the grandfather’s offspring down to the daughter’s son 295,296,297.

GREAT GRANDFATHER’S FATHER, and the two ancestors above him, with their respective descendants including daughters’ sons succeed in the consecutive order 305,306,307

GREAT GRANDSON (in the male line,) inherits in default of his father and grandfather, and with his granduncle, if any ........ 19,20,21,462,463

GREAT GRANDSON’S SON. See Sakulya or distant kindred. .................. 305

GREAT GRANDSON’S GRANDSON. See Sakulya or distant kindred. ........ 305

GREAT-GRANDSON’S GREAT GRANDSON. See Sakulya or distant kindred. ........ 305

GRIHASTHA or Grihita, a married householder, in one of the four orders or conditions of life ........ 654 (note.)

GUARDIAN,
universal,—the Sovereign ........ 399
natural,—the father and mother ...... 401, 409, 412
should be appointed by the Sovereign to take care of an infant or minor, and his property ........ 399, 400
preferably to be appointed by reference to relation, degree of proximity, and fitness ........ 400, 401, 407, 408, 409
of a female infant, who should be before her marriage, and who after her marriage ........ 402, 408
of a male minor, paternal kindred is preferred to the maternal, and the near, if qualified, to the distant ........ 400, 401, 407, 409
cannot do any thing injurious to the interest of the ward, but always what is advantageous to him 402, 403, 406, 409
can take and hold possession of his ward’s property, but must render an account thereof, and be responsible for his own acts, and subject to removal for abuse of his trust ........ 406, 907, 924, 935, 939, 942, 943

H

HEIRS,
according to the Dáya-krama-sangraha, which is preferred to the other Bengal authorities ........ 274, 276 et seq.
Heirs (continued,
according to the Dāya-bhāga. ... ... ... 266
according to Sri-krishna's commentary on the Dāya-bhāga ... ... ... ... ... 268
according to the Dāya-tattva ... ... ... 267
according to the Vivāda-bhāngabhāna or Colebrooke's Digest ... ... ... ... ... 271

Heritable right, cause of,
in the North Western and Southern schools ... ... 1039
in Bengal, the existence of the son (i.e. heir) at the time of the father's (i.e. the predecessor's) death natural or civil ... 2,3,4,5,6,7,9,10,234 et seq. 252,260,1046,1067
does not remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of succession ... 7,239,260—262,283 & 240 (notes) 1049,1050,1063
being once vested cannot be divested before the occupant's death, natural or civil, or voluntary abandonment ... ... ... ... ... 2,3,9,10,78,109,980,1046

Heritage, defined ... ... ... ... ... ... 1
Hermit (vâna-prashta,) civiliter mortuus ... ... ... ... 9,10
excluded from inheritance ... ... ... ... 997, 1003
is succeeded by his spiritual brother. ... ... ... ... 312

Hermitage, one of the four orders or conditions of a Hindoo ... 654

Hindu law,
origin of ... ... ... ... ... ... 1 pref.
divided into three Kândas or parts. ... ... ... 1 pref.
provides no rule against perpetuities ... ... ... 585
does not limit the testamentary power ... ... ... 585
makers of ... ... ... ... ... ... 1,2 pref.
schools of ... ... ... ... ... ... 12, pref.
digests and authorities of—respected preferably in each of the schools ... ... ... ... 12 pref. et sequ.

House, garden or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father's life-time, remains his indivisible property; for his father has sanctioned by not forbidding the construction of it ... ... ... 529
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>STUDY</td>
<td>duty of—to his wife when going abroad</td>
<td>674</td>
</tr>
<tr>
<td></td>
<td>for what fault—can lawfully desert his wife</td>
<td>675</td>
</tr>
<tr>
<td></td>
<td>cannot properly desert his wife without any of the faults recognized by the law</td>
<td>676</td>
</tr>
<tr>
<td></td>
<td>may be deserted by his wife when and why</td>
<td>677</td>
</tr>
<tr>
<td></td>
<td>USBAND'S, brother's son's daughters, not heirs</td>
<td>1051</td>
</tr>
<tr>
<td></td>
<td>YPOCRITE (or a person wearing the token of religious mendicity,) excluded from inheritance</td>
<td>997,1002</td>
</tr>
<tr>
<td>I</td>
<td>DUTY, defined</td>
<td>1004, 1005</td>
</tr>
<tr>
<td></td>
<td>entitled to maintenance and not to inheritance</td>
<td>997,1012</td>
</tr>
<tr>
<td></td>
<td>INGRANTIA (LEGIS VIL EXECUSAT)—applies to questions of adoption and inheritance as well as to other laws</td>
<td>993</td>
</tr>
<tr>
<td></td>
<td>LEGITIMATE issue, of a Shūdra, entitled to inherit, (but see the remarks at pages 16 (note,) 913,914,915)</td>
<td>638</td>
</tr>
<tr>
<td>INHERITANCE</td>
<td>vests on the natural or civil death or voluntary abandonment of the occupant</td>
<td>2,3,4,5,6,7,8,109,1046</td>
</tr>
<tr>
<td></td>
<td>does not in general vest in females</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>vests in particular females according to particular texts (see females)</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>of a kingdom or principality. See Rāj.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>exclusion from,—how caused</td>
<td>997 et sequre.</td>
</tr>
<tr>
<td></td>
<td>charges on</td>
<td>342</td>
</tr>
<tr>
<td>SPOTENT, (defined,)</td>
<td>...</td>
<td>1003</td>
</tr>
<tr>
<td></td>
<td>excluded from inheritance, but not from maintenance</td>
<td>997,1012</td>
</tr>
<tr>
<td>IMPURITY</td>
<td>on deaths and births to be observed by an adopted son and the adopter's family</td>
<td>893 et sequre.</td>
</tr>
<tr>
<td>SCHOATE RIGHT</td>
<td>not recognized in Bengal</td>
<td>1061</td>
</tr>
<tr>
<td></td>
<td>recognized in the North Western and Southern Provinces</td>
<td>1,2 (note,) 1061</td>
</tr>
<tr>
<td>CONTENTANCE</td>
<td>See adultery.</td>
<td></td>
</tr>
<tr>
<td>NOBLEMENT</td>
<td>follows the principal where the parties are joint in estate</td>
<td>686</td>
</tr>
</tbody>
</table>
XXX.

Incurable or obstinate and agonising disease, (defined,) . . 1006,106
causes of exclusion from inheritance . . . . .997,1005,1011

Initiation. See initiatory ceremonies.

Initiatory ceremonies,

which and how many they are ... ... ... ... 36
of the uninitiated brother and sister, are to be per-
formed by the elder brothers out of the patrimony ... 36
the expenses of—of the late owner’s unmarried
daughters must be defrayed in proportion to the
wealth inherited ... ... ... ... ... ... 36
of the brothers and sisters only, and not of their
children, are to be performed out of the undivided
paternal wealth ... ... ... ... ... ... 36
the expenses of—for the late proprietor’s daughter
should be provided out of the inheritance where it
has descended to a single heir ... ... ... ... ... ... 36
should be performed by the brothers even with their
own funds where there is no patrimony ... ... ... 36
of an adopted son, performable in the adopter’s
family ... ... ... ... ... ... 876 et sequ.

Institutes or collections (Sanhitás,) of the sages. . . . 3,6 pre

Issue male, or lineal descendant, signifies son, grandson,
great grandson and daughter’s son... ... ... 22
of an outcast or degraded (as defined at page
1002) is excluded from inheritance ... ... ... 97

J.

Jágnyavalkya or Yágnavalkya, one of the legislators,
whose Sanhitás or Institutes are the original of the
Mitákbhárás which is a commentary thereon . . . 1,7 & 10 pre

Jojana (a measure of distance containing four Kashás
or about seven English miles.) See different
country ... ... ... ... ... 15 pre

Jati. See Yati.

Jímśta-váhana,—author of the Dáya-bhágá, the ground
work of the Bengal school ... ... ... 15 pre

Joint family. See joint property and undivided family.

Joint property, (see property)

augmented by the exertion of any member of the joint
family with the assistance of common stock does
not entitle him to a greater share ... ... 469, 47
JOINT PROPERTY (continued,)

under what circumstances to be held or presumed as such ... ... ... ... ... ... ... ... ... ... 500—502

where the family is joint, the property acquired by its members must be presumed to be joint, until such presumption is rebutted by him who claims it as his self-acquired property ... ... ... ... ... ... 513

answerable for the debt, incurred for the sake of the joint family (see debts.)

answerable for a debt to the extent of the debtor’s share (see debts,) ... ... ... ... ... ... ... ... 640

alienable by a single member where a calamity affecting the family, or the support thereof, or the performance of an indispensable duty, renders the alienation necessary, and the other parcer or parcers are incompetent by minority &c. or unable by absence and so forth to give consent to the same (see managing member.) ... ... ... ... 597—599

JUGA. See yuga, and ages of the world.

K

KALI yuga or juga, the fourth or last age of the world according to Hindoo Division (see yuga.) ... ... ... ... ... ... ... ... 3 pref.

KINDRED. See Kinsmen

KING,
inherits in default of all heirs, excepting, however, the property of a Brâhmana ... ... ... ... ... ... 157, 309 310

universal guardian ... ... ... ... ... ... ... ... ... 399,400

may appoint a guardian (see Sovereign.) ... ... ... ... 399,400

KINSMEN,

near, sapindas, q. v.
distant, sakulyas, q. v.
remote, samânodakas, q. v.
taking or consuming property or effects when unseparated are not bound to restore or make good the same ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 540

KRITA-YUGA or JUGA, the first of the four ages according to Hindoo division ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 3 pref.

KRITA-PUTTRA, a son bought, adopted only by Gossaeens ... ... ... ... ... ... ... ... ... 753

KRITIMA or KRITA-PUTTRA, commonly called Kariâ-putta or son made, defined ... ... ... 745,746

prevails in Mithilâ, not in Bengal ... ... ... ... ... ... ... ... ... 16 (note,) 1042

KULÁCHARA, (family usage,)

constitutes an exception to the general maxims of the law. (See usage or custom) ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 18,314
<table>
<thead>
<tr>
<th><strong>xxxii.</strong></th>
<th><strong>page.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>L</strong></td>
<td></td>
</tr>
<tr>
<td><strong>LAME, (defined)</strong></td>
<td>1004</td>
</tr>
<tr>
<td>excluded from inheritance</td>
<td>997</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LANDED PROPERTY,</strong></td>
<td></td>
</tr>
<tr>
<td>acquired by gift from her father may be alienated by a woman, but not that to which she succeeded by inheritance</td>
<td>632</td>
</tr>
<tr>
<td>recovered by the exertion of one member of an undivided family should be shared by all, after giving the recoverer one fourth over and above his share</td>
<td>473, 50</td>
</tr>
<tr>
<td><strong>LAW books, respected in the different schools</strong></td>
<td>12 pref. et sequ</td>
</tr>
<tr>
<td><strong>LAW-givers. See legislators.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>LEGISLATORS, who and how many they are</strong></td>
<td></td>
</tr>
<tr>
<td>according to the list of Jágonváleka</td>
<td>1 pre</td>
</tr>
<tr>
<td>according to the list of Parášara</td>
<td>2 pre</td>
</tr>
<tr>
<td>according to the Padma-purána</td>
<td>2 pre</td>
</tr>
<tr>
<td>according to Råm-krishna</td>
<td>2 pre</td>
</tr>
<tr>
<td><strong>LINGIF. See Hypocrite</strong></td>
<td>100</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LIMITATION, (see cause of action)</strong></td>
<td></td>
</tr>
<tr>
<td>for a reversioner</td>
<td>58 (note) 120, 121, 122, 1052, 1053, 105</td>
</tr>
<tr>
<td>for a minor reversioner 12 years from the date of his coming of age or estate vesting</td>
<td>58 (note)</td>
</tr>
<tr>
<td>for setting aside the adoption of a second son is 12 years from the cause of action</td>
<td>96</td>
</tr>
<tr>
<td>for the recovery of property held in adverse possession, 12 years from its date</td>
<td>58 (note) 12</td>
</tr>
<tr>
<td>for a widow 12 years from the date of her husband’s death</td>
<td></td>
</tr>
<tr>
<td>is covered by commensality within 12 years</td>
<td>101</td>
</tr>
<tr>
<td>for an adopted son is within 3 years of his minority to sue to set aside the illegal acts of his adoptive mother</td>
<td>102</td>
</tr>
<tr>
<td>with respect to an adopted son</td>
<td>102</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LEPER,</strong></td>
<td></td>
</tr>
<tr>
<td>with ulcers discharging putrid matter or blood, does not inherit, though he may have performed the expiation</td>
<td>997, 1006, 1010, 1011</td>
</tr>
<tr>
<td>of any other description (except the above) does not also inherit except on performance of expiation</td>
<td>1007, 1011, 101</td>
</tr>
<tr>
<td>cannot adopt unless he has performed the prescribed expiation</td>
<td>71</td>
</tr>
<tr>
<td><strong>LEPROSY, (see leper) different kinds of</strong></td>
<td>1010, 1011</td>
</tr>
</tbody>
</table>
xxxiii.

M

MAID, excluded from inheritance under what circumstances .... .... .... .... .... .... 997,1004,1005

MAINTENANCE (a charge on the inheritance,) .... .... .... 342

must be given to the dependant members of the deceased's family who cannot inherit as heirs .... .... .... 370,373,374,375,376,379 et seq.

should be separately allowed to that wife or widow who for a just cause could not live in the family, or lived with her own relation without unchaste purposes, or left her husband's family for no improper purpose .... .... .... 370,381,384,388,1066

must be supplied to a wife or any dependant member, if expelled or deserted without a just cause .... 370,374,392

the amount of—should be fixed in consideration of the proprietor's estate .... .... .... .... .... 370

in addition to—an amount should be supplied, if means would allow, for the necessary and religious expenses .... .... .... .... .... 370,381,392

allowed, even though not provided for in the late owner's will .... .... .... .... .... 380

forfeited by a wife or widow who, though directed by her husband to be maintained in the family house, should reside elsewhere without a just cause .... 370,374,389

always forfeited by an unchaste or traitorous woman 371,372,375,390

should be supplied to the person who, but for the prevalent custom, or a defect or other legal cause, has been excluded from inheritance .... .... .... 371

if not willingly given by the inheritor, he must be compelled to give it .... .... .... .... 372

must be given to the daughters until they are provided with husbands, and to the widow or widows who preserve the chastity .... .... .... 372,390

should be given to a son's widow so long as she leads a virtuous or chaste life, whether she elects to live with her father-in-law or with her own relations; but the law could only take effect on the supposition that the father-in-law had means to do so .... 1056

should not be given as a matter of course to a son's widow, if her husband had separately acquired property .... .... .... .... .... 390

right to—out of the lands of her husband is purely personal, and cannot be sold in execution of a decree or otherwise transferred .... .... .... .... 156
MANAGING MEMBER of a joint family, may conclude a sale or other disposition of joint property for what purposes, and under what circumstances ... ... ... ... 597 et seq. 1064

an alienation by—cannot be questioned by another member, if he stands by, and sees the application of the sale-proceeds for the benefit of the whole family ... 1064

MANU or MENU the first (ādina,) sprung from the Self-existent, the first lawgiver of the Hindoos, and supposed by some to be the same as Adam, and by others, the same as minos, mneues or mneus ... 6 pref. (note)

MĀRḤĀṬĀ School, and the law books respected there ... 14 (pref.)

MARRIAGE,
a civil contract, as well as a religious sacrament, the last for the twice born and the only (proper) one for the Shādras ... ... ... ... ... ... ... ... 366,645

not irrevocable merely after betrothment, but after the performance of the fixed ceremonies ... ... ... ... ... 615

to be contracted with the first of the persons to whom the damsel was promised, in which case the others shall recover what they had given to the bride, but if the first bridegroom arrive when the second nuptials have been consummated, he shall receive back what he had given ... ... ... ... ... ... ... ... 646

for the second time, is scarcely in practice amongst the Hindoo gentry, on the bridegroom's death after the ceremony of gift and before the Kushandikā, which completes the marriage ... ... ... ... ... 647

the eight forms of— ... ... ... ... ... ... ... ... 648

the brāhma, doina, ārsha, and prājāpataya forms of—are legal for Brāhmanas, while the gāndharva and rākshasa forms of—are peculiar to the Kshatriya, the ēśvra marriage is permitted for a Voishya, but the poishācha form should be practiced by none ... 649

the Brāhma form of—is at present practiced by good men, but even the other forms of—are sometimes practiced by others ... ... ... ... ... ... ... ... 650

rights or ceremonious of— ... ... ... ... ... ... ... ... 650

the prescribed rites of—are necessary to be performed in each and every one of those forms ... ... ... ... ... 650

persons competent to give a girl in— ... ... ... ... ... ... ... ... ... ... ... ... 651,655

a Koolin Bramin is not such a natural guardian of his daughter as the mother ... ... ... ... ... ... ... ... ... ... ... ... 1061
MARRIAGE—(continued,)

the proper time at which every father is bound to
give a girl in—; he that does not, is punishable in
both worlds ... ... ... ... ... ... ... ... ... ... ... ... ... 651

a girl may, however, be kept unmarried until her
death, if a bridegroom endowed with learning and
good qualities be not had ... ... ... ... ... ... ... ... ... ... 652

if the persons competent to give a girl in—do not
give her in marriage at the proper time, she should
wait for three years since the appearance of her
menses, after which, she is at liberty to choose for
herself a bridegroom, she can also choose when mar-
riageable a bridegroom for herself, if there be none
competent to dispose of her in marriage ... ... ... ... ... ... 653

prohibited between persons of two different castes,
between the father's sapindas or the persons of the
same gotra or of equal pravaras with him, or between
sapindas or samánodakas of the maternal grand-
father ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 657

prohibited with a female within the seventh degree
on the father's side, and fifth degree on the mother's
side ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 659

of a son adopted in the dattaka form, prohibited with
a girl who is connected as sapinda to his adoptive
or natural father, or who is of the same gotra with
either of them, or related as sapinda or samánodaka to
the father of the adoptive or natural mother ... ... ... ... 661

of a Shúdra, prohibited with a girl related as
sapinda or samánodaka, or with a girl within the
seventh and fifth degrees as above ... ... ... ... 662,663

not prohibited with a girl who is beyond three
gotras, though she be related within the seven and
five degrees as above ... ... ... ... ... ... ... ... ... ... ... ... ... 662

with a step-mother's brother's daughter, his daught-
er's daughter, and the spiritual preceptor's daughter,
prohibited ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 664,665

with a damsel named as the mother of the bridegroom,
prohibited, unless another name is given to her before
the marriage ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 665

of a younger brother, before that of his elder brother,
though permitted by the latter, is prohibited, except
under any of the recognized circumstances ... ... ... 666—669

of a younger sister, while her elder sister remained
unmarried, prohibited, ... ... ... ... ... ... ... ... ... ... ... ... ... 669
Marriage—(continued,)

with those girls only is vitiated, who, though married, do not become wives, and whose husbands are ordained to desert them and perform the expiatory penance ... ... ... ... ... ... 670

with girls of visible defects, as well as with those bearing the names of constellations, trees, rivers and so forth, though prohibited, is not, vitiated, and they, if married, become wives of their husbands ... ... 671

Maternal Grandfather,

inherits after the paternal ancestors three degrees in ascent, and their offspring including daughters' sons ... 297,298

Maternal Grandfather's daughter's son, inherits after the maternal uncle's son's son ... ... 298,303

Maternal Great Grandfather, and his father, and their descendants down to daughters' sons succeed on failure of the maternal grandfather and his descendants ... 298

Maternal Uncle,
succeeds in default of the maternal grandfather ... 297,301

Maternal Uncle's son,
inherits in default of maternal uncle ... ... 297,299,303

Maternal Uncle's son's son,
succeeds in default of the maternal uncle's son ... 298

Member of a Family,

power of—if head of the family, or holding management of the joint estate (see debts) ... ... 597 et sequae. 1064

can alienate his own share under any circumstance, and for any purpose ... ... ... ... ... 593—597

may alienate his co-parcener's share for what purposes, and under what circumstances, ... ... 597 et sequae.

is not barred from his right of requiring a partition of the estate, unless he has already accepted a portion of the property instead of his family share ... ... ... 1058

(see pp. 20,464)

Migration from One to Another Country,

entitles the migrating family to the benefit of the laws of the former country, if it has uniformly observed the religious ordinances peculiar to such country, otherwise, it must be subject to the laws of the latter country ... ... ... ... ... 334—341

raises the presumption that the migrating family has brought with it, and retained, all the religious ceremonies and customs of the former country, leaving the opponent to rebut the same by satisfactory proof ... 334,336
INOB, (see minority,)
incompetent to do any civil act ... ... ... 397
may after a certain age adopt, or authorise his wife,
to adopt, a son ... ... ... ... ... 772
not bound by Hindoo law to pay the former owner's
debts even though he inherit his assets (But see the
foot note at page 398) ... ... ... ... ... 398,399
property of—should be deposited or preserved, free
from disbursement, in the hands of kinsmen and
friends ... ... ... ... ... ... ... 398
bound to pay the necessary debts contracted for him ... 406

If a widow,
is under the control of her husband's relations in
the management of his estate (see guardian.) ... 408
may adopt a son under her deceased husband's
authority. ... ... ... ... ... 769,778

INORITY,
extends to the end of the fifteenth year ... ... 396,408,603
is a bar to the performance of civil functions ... 397

ITÁKHARÁ,
by Vgyáneswvara, a celebrated commentary on the
Institutes of Sage Jáonyavaleya, partakes of the na-
ture of a Digest, and is the chief guide of the Benares
school, it prevails also in the schools other than
that of Bengal ... ... ... ... ... ... 12 pref.

ITHILÁ SCHOOL, and the law books respected there ... 13 pref.

OHANT,
succession of, regulated by the custom of the
temple to which each belongs ... ... ... 323,326,327,330

ORTGAGE,
verbal, valid, provided the property remained in the
hand of the mortgagee, ... ... ... ... ... 610

OTHER,
inherits in default of the father, but the step-mother
is excluded ... 187,189,190,191,192,195,196,483,485,487,967

cannot without a legal cause or necessity alienate the
property which she inherited or received in partition,
and which, on her death, devolves on the heirs of the
former owner ... 98,189,196,199,200,484,485,487,491,630
cannot even on proof of waste be disinherited or put
out of possession or management of the inherited
property ... ... ... ... ... ... 200,201
xxxviii.

Mother—(continued,)

is entitled on partition of her husband’s estate by her sons or son and grandson to a share equal to that of a son, and can exact it on their refusing to give it ... ... ... ... ... ... 480,481,485,486,487 is entitled to maintenance from her husband’s estate if she has an only son ... ... ... ... ... ... 481

as her son’s guardian, natural or appointed, may sell, or mortgage his inherited property for his and her support, as well as for the performance of the necessary acts including the payment of Government revenue (see guardian)409,907,924,935,939,942,943,1058,106

N

Nephew, (brother’s son,) considered as a son... ... ... ... ... ... ... ... ... ... ... 74

inherits (however) after a brother ... ... ... ... ... ... ... ... ... ... ... 20

Next of Kin or Friend, may institute or defend suits for a minor ... ... ... ... ... ... ... ... ... ... ... 40

Nitya Dvamushyayana. See adoption and Dvamushyayana.

Noncaptive will. See verbal gift or gift verbal.

Nuddea case, which settled the question respecting the testamentary power of a Hindu of Bengal ... ... ... ... 55

Nuptial rites or ceremonies ... ... ... ... ... ... ... ... ... ... 65

O

Observation, General,
on the different law-books current in Bengal ... ... ... ... 26

Obsequies,
of the late proprietor must be performed by the person who inherits his estate, or by another qualified to perform the same at the expense of the inheritor ... ... ... ... ... ... ... ... ... ... ... 363,364 (note)
half (i.e. a sufficient portion) of his estate should be set apart to defray the charges of his obsequies ... ... ... ... 88,36

Obstinate disease. See incurable disease.

Opinion,
of Mr. H. Colebrooke, intimating caution to be taken in upholding a death-bed gift ... ... ... ... ... ... ... ... ... ... 604 (note)
giving preference to the Deya-krama-sangraha where- ever there is a discrepancy in the order of succession in the books respected in Bengal ... ... ... ... ... ... ... ... ... ... 378

of Sir T. Strange, acquiescing in the above... ... ... ... ... ... 278
OPINION—(continued)

of Sir William Macnaghten, giving preference to the *Diya-krama-sangraha* as done by Mr. Colebrooke...

of Baboo Prosunno Coomar Tagore, on the above and other subjects...

of Mr. Elberling, adopting the order of succession as in the *Diya-krama-sangraha*...

ORDER OF SUCCESSION,

**General:**

(the late owner's own) 1 son, 2 son's son, 3 son's grandson, 4 widow, 5 daughter, 7 daughter's son, 8 father, 9 mother, 10—13 father's son, grandson, great grandson, and daughter's son...

after this, the Sanscrit law books respected as authorities, differ in the order of successors as well as in their number...

**Special:**

approved of by all the modern authorities, Native as well as European, and adopted in this book—14 Brother's daughter's son*; 15 paternal grandfather, 16 paternal grandmother, 17—20 paternal grandfather's son, grandson, great grandson and daughter's son, 21 paternal uncle's daughter's son*;—22 paternal great grandfather, 23 paternal great grandmother, 24—28 paternal great grandfather's son, grandson, great grandson, daughter's son, and grandfather's brother's daughter's son*;—29 maternal grandfather, 30—33 his son, grandson, great grandson, and daughter's son; 34—38 maternal great grandfather, his son, grandson, great grandson and daughter's son; 39 maternal great grandfather, 40—43 his son, grandson, great grandson and daughter's son; next the *Sakulyas* viz. great grandson's son, grandson, and great grandson, (the late owner's) great great grandfather, his father and grandfather, and their offspring in the order of proximity; then the *Samhodakas* or ancestors from the seventh to the fourteenth degree in the ascending line; next, the spiritual preceptor, pupil, and fellow student; then the descendants of the same ancient sage being inhabitants of the same village; next, men descending from the same patriarch and inhabiting the same village...

---

* The succession of the brother's daughter's son, paternal uncle's daughter's son, and paternal grandfather's brother's daughter's son, has, of late, been disowned by the High Court. preference being given to the *Diya-bhasha*, in spite of the conclusion and decision of Colebrooke, Macnaghten and all other modern authorities. See gate, p. 276.
ORDER OF SUCCESSION—(continued)

next virtuous Brāhmaṇas learned in the three Vedas and inhabiting the same village, then the king (excepting, however, the property of a Brāhmaṇa, ) a Brāhmaṇa’s property is inherited even by the qualified Brāhmaṇa of another village, in default of such Brāhmaṇa, by a common Brāhmaṇa of the same village, in his default, a like Brāhmaṇa of another village. The preceptor inherits from a professed student, the virtuous pupil from an ascetic, the spiritual brother from a hermit. The preceptor inherits also from a perpetual student, and the father or other relation from a temporary student ...

according to the Dāya-bhāga ...

according to the Dāya-tattva ...

according to Śrī-krishna’s Commentary on the Dāya-bhāga ...

according to the Vivāda-bhangārāva (or Colebrooke’s Digest) ...

according to the North-western and Southern schools ...

OUTCAST, AND HIS ISSUE, EXCLUDED FROM INHERITANCE (see degraded) ...

P.

Pālak-futta, not a lawful son, and not entitled to inherit ...

Parents, rights of ...

should be maintained by their son ...

Parol,

authority to adopt, as good as one written ...

Evidence, weaker than documentary ...

does not prevail when there is a writing to the contrary ...

Participation,

of the son or sons born or begotten after partition they should have shares of the then existing estate, exclusive of the income and expenditure ...

of a partner or co-partner appearing after partition— the descendants to the fourth degree living in the same country, and to the seventh degree living in a different country, are, on proof, entitled to shares ...
PARTITION, defined ... ... ... ... 540—544,582
brosheles, how to be ascertained ... ... 540, et sequ.
brothers living together must be presumed to be joint until the contrary is proved ... ... 1058
mere division of the income for the convenience of the different members of the family does not amount to the division of the family ... ... 543,544,582
made contrary to law, void, and distribution should be made anew ... ... ... ... ... 539
with parceners or co-parceners appearing after partition, how and under what circumstances to be made ... 546, et sequ.
made by a son without the father's consent is illegal, but with his consent binds him though absent at the time, and without his consent, does not bind the son who made ... ... ... ... ... 417
BY A FATHER,
of his own acquired wealth or property,—
the period or time for— ... ... 11,413,415
he may reserve any part of—but not so of the property ancestral ... ... ... ... ... 418
in unequal proportions made for any of the allowable causes, valid as well as moral ... ... 418,436
in unequal proportions made through perturbation of mind occasioned by acute disease, wrath &c., or through the influence of excessive partiality on his mind from love or the like, invalid ... ... ... ... ... 420,421,422,436
in unequal proportions, cannot be made even for any allowable cause when sons unanimously request partition ... ... ... 422
sons are incompetent to disturb—of his self-acquired property even though there be no document forth coming ... ... ... ... 423
a share equal to that of a son must be given to the sonless wife, when his self-acquired property is equally divided ... ... ... ... 424,425
but if Strī-dharma was given by her husband or another, half a share should be given to the sonless wife ... ... ... ... 425
if the share allotted to a wife, (mother or grandmother) be consumed in support, she is entitled to receive alimony, but if there be a surplus, the owner may resume it, as he may from his son... ... ... 427
By a father,—(continued)

the wife (as well as mother) cannot, without an allowable cause or legal necessity, alienate the property received in partition, but can only enjoy with moderation, after her, the heirs of the former owner will take it ... ... 427,428,484,485,487

Of his ancestral property:

the period or time for ... ... ... 11,418,415

unequal partition cannot be made of the ancestral movable property where there is no such immovable property, ... ... 430,434,436 et sequ.

the father may take two shares, and not more, for himself, and allot a single share to each of his sons ... ... ... 438,434,436 et sequ.

he cannot make an unequal distribution even for any of the allowable causes mentioned in the partition of self-acquired property ... 434,436 et sequ.

ancestral property, recovered by him, can be used as his own acquired property ... ... ... 429

ancestral land recovered solely by his own labour, should however be divided between his sons, after reserving for himself a fourth part over and above his share ... ... ... 429

By brothers,

the period or time for ... ... ... 11,452

lawful, with the mother’s consent, otherwise not so while she lives, though not invalid ... 452

with deductions for the eldest or elder brother, impliedly obsolete ... ... ... 16,17,18,457

shares at the present age are equal among brothers of the same description, and a third and two-thirds between those adopted and legitimately begotten ... 16,17,18,460,466,909,910,917,922

the grandsons whose father is dead, and the great grandsons whose father and grandfather are dead, are respectively entitled to their deceased ancestor’s share ... 20,21,22,192 et sequ. 460,461

a brother or nephew having already taken a share during his father’s life-time, or reasonably supposed to have accepted a portion instead of his share, has no further claim on the estate ... 20,464,1058

property acquired by the father is, on his death, inherited equally by all his sons, whether they aided in the acquisition or not (see acquisition) ... 465
By brothers—(continued,)

the whole and half-brothers are equally entitled to an immovable estate remaining undivided. 203,1057:

of acquisitions effected by the use of the joint stock, labour or exertion, or without it, as well as those made through science taught by a member of the family, or through valor, how to be made (see acquirer and acquisition) ... 468—478,500—53%

augmentation of joint property by the exertion of one member, does not entitle him to a larger sharer (See increment) ... 469,478,524,586

of the land recovered with or without the family aid, should be made after giving to the recove- rer one fourth above his own share, while the whole of any other property recovered without the joint-funds or aid is taken by the acquirer alone (see acquirer and acquisition) ... 473,500,521

can take place even at the instance of a single parcener ... 478

circumstances under which a mother is or is not entitled to a share ... 480—490

circumstances under which a grandmother is or is not entitled to a share ... 491 et seq.

her share should be equal to the largest share of a grandson ... 494

the brother or co-parcener left to support the family of one gone abroad to study science or acquire wealth is to share the acquisition made by the latter, but he cannot have a share merely for looking after the family of the latter ... 469,502,508 520

By reunited parceners, ... 534

the mode of their participation (see reunion and reunited parceners) ... 534 et seq.

Pārvana-Shrāddha,

the offering of a double set of oblations, viz. three to the father, grandfather and great grandfather, and three to the maternal grandfather, his father, grandfather ... 20 (note,) 900, et seq.

Paternal grandfather. See grand-father (paternal.)

Paternal grandfather’s daughter’s son, inherits in default of paternal uncle’s grandson ... 62,392,296

Paternal grand-mother. See grandmother (paternal.)
**XLIV.**

**Paternal Great Grandfather,** his father and grandfather and their descendants inherit successively in default of the paternal grandfather’s descendants. (See great grandfather.)

**Paternal Great Grandmother,** entitled to inherit in default of her husband ... ... ... ... ... ... 2

**Paternal Uncle,**

of the whole blood, inherits in preference to the paternal uncle of the half-blood who succeeds after him ... 239, 29

**Paternal Uncle’s Daughter’s Son,** inherits in default of the paternal grandfather’s daughter’s son according to the Dāya-krama-sangraha, and not according to the Dāya-bhāga ... ... ... 292, 1049, 105

**Paternal Uncle’s Grandson,** of the whole and half blood, succeed successively in default of the paternal uncle’s son ... ... ... ... ... ... ... ... ... 25

**Paternal Uncle’s Son,**

of the whole blood, inherits in default of the paternal uncle of the half-blood ... ... ... ... ... ... ... 25

of the half blood, succeeds after that of the whole blood ... ... ... ... ... ... ... ... ... ... ... ... 29

**Patni** (lawfully married wife) defined. See widow. ... ... ... ... ... ... ... ... ... ... ... ... ... 4

in the present age signifies no other than one of the same caste as her husband ... ... ... ... ... ... ... ... ... ... ... ... ... 4

**Perpetual of Professed Student** (Naiskīthīka brahmachārī) is succeeded to by his preceptor ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 312, 31

**Perpetual Device,** not restricted by the Hindoo law ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 58

**Perpetuity,**

the rule against it, as contained in the English law, not applicable to the wishes of Hindoos. ... ... ... ... ... ... ... ... ... ... ... ... ... 58

**Polygamy,** prohibited, except for any of the allowable or recognised causes ... ... ... ... ... ... ... ... ... ... ... ... ... 672 et seq

**Possession,**

when adverse and when not so ... ... ... ... ... ... ... 120, 145, 105

when adverse, suit to set aside the same, must be brought within 12 years from its date ... ... ... ... ... ... ... ... ... ... ... ... ... 12

accompanied by hereditary succession, makes the title weighty ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 601, 68

**Prāyashchitta Kānda,** one of the three parts of Hindoo law (Dharma-shāstra) ... ... ... ... ... ... ... ... ... ... ... ... ... 1 pm

**Preceptor,** takes the property of a professed or perpetual student ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 812, 81
Pregnancy, how to be dealt with ... ... 3 (note,) 4,531 et seue.

Power, (see proprietor, will and alienation,)
of a proprietor over his inherited property divided or undivided, not restricted 552 et seue. 593, 594, 595, 596, 597 et seue. 604,605

of a female over the property inherited or received in partition or that given by her husband restricted, but absolute over her absolute stri-dhan 45—159,427,428,484, 485,487,688,689,696,697,692,695,696,697

of a husband over his wife's stri-dhan ... ... 689 et seue.
of a co-parcener over his co-sharer's undivided share, restricted and unrestricted under what circumstances 597,598

of a guardian, natural or appointed, over his or her ward's property ... ... ... 402, et seue. 407,633

of a pregnant widow, over the property left by her husband. ... ... ... 3 (note,) 4,907,908,935—941,3058

of a widow authorised to adopt a son. ... ... 907,908,935—941

of the master, head or managing member, of a family, over the property belonging to the same. 358,597,598,599,1064

of a member of an undivided family ... ... 358, et seue.597,598

of a slave or servant belonging to a family (see debts,) 360,599,642

Primogeniture, right of, obsolete or not recognised at the present age. ... ... ... 16,17,18,457—460

Procurer amis. See next of kin or friend.

Promise
of an excessive amount by one in extreme distress ought not to be fulfilled ... ... ... ... ... 622
by word of mouth, is a debt of conscience. ... ... ... 56,544
made by the late proprietor should be fulfilled by his heir or heiress ... ... ... ... ... 36,344,531
of a person's whole wealth for saving from a great danger or calamity, invalid, and should be fulfilled in proportion to the benefit conferred ... ... ... ... 622

Property,
ancestral and self-acquired, defined and distinguished ... ... ... ... ... ... 429—432
liable to partition ... ... ... ... ... ... 500 et seue.
exempt from partition ... ... ... ... ... ... 503 et seue.
immovable, given to a woman by her husband cannot be disposed of by her at pleasure which on her death devolves on his heirs ... ... ... ... 641,688,694,696
Property.—(continued.)

movable, has no difference from immovable property, when inherited by a widow or a female ... ... 60, 97, 13;
joint, answerable for a debt to the extent of the debtor's share only ... ... ... ... 64,
acquired in the nature of an increment to the common stock, is divisible equally amongst the co-sharers ... ... ... ... 52,
newly and separately acquired with the aid of the joint funds or joint labour, is divisible amongst the co-sharers, the acquirer being entitled only to two shares ... ... ... ... 463, 469, 478, 500, 52
acquired without the aid of the joint funds or joint labour, belongs to the acquirer exclusively (see acquirer and acquisition) ... ... ... 503, 52

Proprietor, or owner,

the extent of his power over his divided or sole property ... ... ... 552 et seques. 568 et seques.
over the undivided property, ... ... 592, 593 et seques.
can, without the consent of his son or other heir, give, sell, or pledge his possessions, whether inherited or acquired, real or personal, and can by will prevent, alter, or affect their succession to such property, 552 553, 554, 556, 558, et seques. 568 et seques. 604, 60
may dispose of by gift or other transfer of his own share, according to his own will, may also alienate his co-partner's share if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties make it unavoidable, and the co-partner be a minor and incapable of giving consent, otherwise his consent is necessary (see gift and alienation) ... ... 593, 595, 597, 598, 59
may give away his whole estate to a stranger though there is a sister or sister's son, ... ... ... 572, 57
may give his whole property to one daughter to the exclusion of his wife and another daughter ... ... 57
may give his self-acquired landed property to one of his sons ... ... ... ... ... ... 57
may give his property to a brother's daughter's son to the exclusion of a sister's son ... ... 57
may make a gift, though he has a son, of his maternal grandfather's landed property which had been usurped, on condition of the donee's recovering it ... ... 57
PROPRIETOR—(continued)

may give his entire property to the husband of one of the daughters of his deceased son to the exclusion of his son’s widow and other daughters ... ... 577

may give his whole property to one daughter to the exclusion of his wife and another daughter ... 604

may give all his property to his two wives in equal allotments ... ... ... ... ... 636

PROPRIETARY right (see heritable right,) the extent of ... ... ... ... ... 552, et sequ. 568,593-599

R.

RAGHU-NANDANA, author of the Dāya-tattva &c., one of the paramount authorities in Bengal... ... ... ... 15 pref.

Rāj, a principality, or a great sementary, taken in the light thereof, is customarily indivisible ... 19,554 et sequ. 617 et sequ.
great possessions or sementaries called—considered by modern Hindoo lawyers as tributary principalities ... ... ... ... ... ... ... ... ... ... ... 19,617
even now entire kingdoms are severally held by one prince although he has brothers (see usage or custom) ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 19

REAL PROPERTY, defined to be land, corrody, biped and slave ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 549

RECOVERED PROPERTY, (see partition)
extcept land, may be used by a father as acquired by himself ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 429

if land, it should be shared by all the parencers, giving to the acquirer a fourth part over and above his share ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 429,473,500

RELIGIOUS ACTS (see initiation and initiatory ceremonies) performable by a widow ... ... ... 21,25 (note,) 76,104

RELINQUISHMENT,
by the occupant extinguishes his or her right
2 (note,) 10,78,109,123,687,1046

by a widow in favor of the first reversioner, valid, also of the second reversioner, if made with the consent of the first ... ... ... ... ... 78,109,123,1046

REMARKS,
on the discrepancies existing in the law books of the Bengal school ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 262,264

on the Dāya-bhāga ... ... ... ... ... ... ... ... ... ... ... 15 pref. 267
Remarks—(continued,)

on the Dāyā-tatwa ... ... ... ... 15 pref. 26
on Śrī-krishṇa's Commentary on the Dāyā-bhāga ... 17 pref. 27
on the Vivāda-bhangūrvana (the translation whereof
is called Colebrooke's Digest) ... ... ... 24 pref. 27
on various kinds of contracts ... ... ... 64

Rent of revenue. See revenue.

Re-partition ... ... ... ... 531 et seq. 538 et seq.

Rescission of contracts (see void gifts) ... ... ... 624 et seq.

Residue of partition,
how to be divided if immovable ... ... ... 203,105
concealed and afterwards discovered, how to be divided ... 53

Resignation of worldly concerns, causes extinction of
right -- ... ... ... 10,78,109,123,63

Restrictions,
on women to dispose of the property inherited or
received by them in partition (see widow, daughter,
mother and grandmother.)
on men to make unequal division of ancestral
property (see partition.)

Resumption,
of an excessive gift, authorised ... ... ... 62
of a conditional gift, lawful, on the non-fulfilment of
the condition ... ... ... ... 43
of an unqualified gift, unlawful ... ... ... 63

Retirement from the world, a species of civil death, on
which the right of the heirs begins immediately
to exist. ... ... ... ... 10,90,81,109,63
any contract made by one who retired from the
world, is void ... ... ... ... 64

Retraction of gifts. See void gifts.

Re-union,
how and among whom to be effected ... ... ... 21
no preference is given to—where claimants in an
unequal degree occur ... ... ... ... 22
is supposed to have taken place where one of sever-
al brothers has separated ... ... ... 221,21

Re-united partners,
who can be— ... ... ... ... 21
Re-united Parceners—(continued,)

inherit to the exclusion of un-reunited parceners
though in the equal degree of relationship 204,205,221 et seque. 535,537,1051

of the half blood, inherit equally with the un-reunited parceners of the whole blood and in the same
degree of affinity (see brother) ... ... 204—209,221

of the whole blood, inherit to the exclusion of the
parceners of the half blood though re-united and in
the equal degree of affinity (see brother) ... ... 204—209,221

have no right to primogeniture ... ... 534,535

rules set out under the head ‘partition by brothers’
are to be observed in re-union also ... ... 535

Revenue, payment of, by a widow, a necessary act, and
the loan justly made for this purpose is payable by the
reversioner ... ... ... ... 78,351,1068

Reversionary Heir, or Reversioner,
of the former owner, entitled to inherit after the
succession of a female heir (see widow) 45,62,69,78,85,89,97,124,
129,135,138,157,171 (note.)

has a right to prevent the female occupant from
committing waste, this right is, however, confined
to the immediate reversioner, and not to the remote,
unless the former has colluded with the female, or
has deligated the right to the latter ... 58,78,85,97,118,120,122,
124,129,135,137,138,142,149

entitled to sue, if injured by a distinct act of alien-
ation, or if the widow relinquished her life-in-
terest and signified to the suit proceeding ... 123,124,149,1057

bound by the act of him through whom he claims ... 107

signing a deed is presumed to have consented to
the terms therein set-out ... ... ... ... 82,1068

being witness to a conveyance by a widow, is pre-
cluded from impeaching the sale on the ground of
waste, he being by such act presumed to have ac-
quiesced therein ... ... ... ... 78,1048,1068

signature of all those—who are superior in rank ne-
cessary to the validity of a deed ... ... ... ... 82,83,85

Revocation. See void gifts.

Right, (see heritable right,)
of pre-emption, not recognised in Bengal ... ... ... 639,640
to an action by a reversioner, when accrues. See limitation.
to sue to set aside a second adoption (see limitation) ... 993
Rites. See ceremonies.

Rules, respecting gift, applicable to sale as well as mortgage 60

Ruling power,

- ultimate heir 157,301
- universal superintendent or guardian of those who cannot take care of themselves 399,486
- is to take care of infants, their property, and to appoint their guardians 406

Sacraments. See initiatory ceremonies.

Sakulyas (distant kindred,) defined 304

- inherit in default of maternal relations 306
- the descending line of—which comprises the great grandson's son, grandson and great grandson, succeeds first in order, then the ascending line, which consists of the great grandfather's father, grandfather and great grandfather and their descendants down to daughters' sons 305,306
- their consecutive order 305,306

Sale, (see alienation, gift and proprietor)

- by unseparated co-heirs of their own portions of the ancestral estate, valid 593—596
- by one parcener of his own undefined share of the estate, is good and valid 593—596
- of the ancestral estate, by the eldest brother or managing member of the family, valid under what circumstances 597,598,599,1064—1066
- is governed by the rules of gift 602
- of mortgaged property, is valid and becomes complete on the discharge of the incumbrance 614
- by a widow, with the consent of the next heir, valid (see widow) 614
- by a wife, of the portion of her insane husband's estate for the performance of an indispensable duty, valid (see widow) 614
- by brothers, of a minor's share in the joint estate invalid, though the mother be a consenting party 634
- by the managing parcener of an entire estate, valid, in a case of necessity 599
- by a minor, of his landed property, void 634
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Samánópakas (remote kindred,) defined.</td>
<td>307</td>
</tr>
<tr>
<td>Inherit in default of sakulyas, and like them in the order of proximity</td>
<td>307</td>
</tr>
<tr>
<td>Sanhitás, collections or Institutes of the sage legislators</td>
<td>16,7,8 pref.</td>
</tr>
<tr>
<td>Schools of law and philosophy, 5 in number</td>
<td>12,13 pref.</td>
</tr>
<tr>
<td>Self-acquired property, defined and distinguished from what is ancestral</td>
<td>429,430,431,432</td>
</tr>
<tr>
<td>Separated co-parcener,</td>
<td></td>
</tr>
<tr>
<td>The extent of his power in his sole or divided property</td>
<td>549,552 et sequae.</td>
</tr>
<tr>
<td>In the undivided property</td>
<td>592,593 et sequae.</td>
</tr>
<tr>
<td>Shares,</td>
<td></td>
</tr>
<tr>
<td>Of brothers (of the same description,) are, in the present age, equal, the deduction of a twentieth part &amp;c. being obsolete</td>
<td>16,17,457—460</td>
</tr>
<tr>
<td>Are also equal where the proportion is not specified</td>
<td>470</td>
</tr>
<tr>
<td>Sin or crime. See crimes.</td>
<td></td>
</tr>
<tr>
<td>Sinful diseases, which are they, and caused by what</td>
<td></td>
</tr>
<tr>
<td>Particular sin or sins</td>
<td>1006 et sequae.</td>
</tr>
<tr>
<td>Sinner or criminal,</td>
<td></td>
</tr>
<tr>
<td>In the highest degree</td>
<td>998,999</td>
</tr>
<tr>
<td>In the second degree</td>
<td>1000</td>
</tr>
<tr>
<td>In the third degree</td>
<td>1001</td>
</tr>
<tr>
<td>Sister,</td>
<td></td>
</tr>
<tr>
<td>Is no heir</td>
<td>226,228,248,249,572,1048,1049</td>
</tr>
<tr>
<td>If unmarried, is entitled to nuptial expenses (see maintenance)</td>
<td>498,1050,1052</td>
</tr>
<tr>
<td>Sister's grandson, is no heir</td>
<td>232</td>
</tr>
<tr>
<td>Sister's son. See father's daughter's son.</td>
<td></td>
</tr>
<tr>
<td>Slaves, defined,</td>
<td>360 (note-)</td>
</tr>
<tr>
<td>May contract for the families of their masters during their absence or incapacity</td>
<td>360</td>
</tr>
<tr>
<td>Cannot sell their own issue while their masters are living</td>
<td>188,228</td>
</tr>
<tr>
<td>Smanáti (law,) comprises three kándás (parts)</td>
<td>1 pref.</td>
</tr>
<tr>
<td>Son,</td>
<td></td>
</tr>
<tr>
<td>Signifies male issue as far as the great grandson in the male line</td>
<td>23,738,739</td>
</tr>
<tr>
<td>Importance of...</td>
<td>27 (note)734 et sequae.</td>
</tr>
</tbody>
</table>
Son—(continued.)
necessary for every person of any sex, and in any of the four conditions of life (grihi &c.) ... 734,735,736,737
not, however, necessary for the woman whose husband has one by her co-wife ... ... ... ... 737
duties of, (see adopted son.)
is bound to maintain his aged parents ... ... ... 51,375
succeeding to his father’s estate, must maintain his daughters, and his own step-mother (see charges on the inheritance) ... ... ... ... ... 376
different kinds of ... ... ... ... 14,744 et seque.
which kind of—is prohibited to be adopted, and which is lawful, in the present (kali) age, 14-16 (notes,) 747 et seque.
deductions in favor of the eldest or any other—obsole and disallowed in the present age (see deduction and primogeniture) ... ... ... ... 16,17,457
his superior or preferable right to inheritance ... ... 14,17
succeeds when his father’s right of property ceases by death, natural or civil ... ... ... ... ... 14
legitimately begotten (ourasa,) takes a double share in partition with his father’s adopted son ... ... 460,909,910
begotten after partition, how to participate in estate, debts, &c. ... ... ... ... ... 529,530,539
begotten before and born after partition how to partici- ... ... ... ... ... 531,532,534
should have a share of the then existing estate ... ... 534

Sons,
what kind of—allowed at the present time ... 15,16 (note) 747
et seque. 753
adopted in the form called krita or kritrima (made.) are prevalent in Mithila, and wherever such adop- ... 16 (note,) 753 (note) 1042
adopted in the form called krita (bought,) are prevalent amongst the ascetics ... ... ... 753
when two or more, they succeed equally ... ... ... 16
by different wives, inherit equally per capita without any reference to the number of those borne by each wife (unless there be a custom to that effect) ... ... 18

Son’s Grandson (in the male line,) inherits in default of the son and son’s son, and is entitled to claim, his father’s portion from his uncle ... ... 20,21,22,463
Son's son, inherits in default of the son... 19,21,22,193
Son's sons or son's grandsons (in the male line) whose father or grandfather is dead, inherit per capita simultaneously with the late owner's surviving son or son's son as the case may be 21,22,193,460,462
and he whose father or grandfather is living, is not entitled to inherit 20
Son's or grandson's childless widow, though excluded by the testator from a share of the estate, is nevertheless entitled to share the income accumulated during her husband's life 579,586
Son's widow,
not entitled to inheritance, but to maintenance 373
is to have maintenance if her husband were not separate from his father, and the father have means to supply (see maintenance) 373,376,1056
Sovereign,
the universal superintendent or guardian of those who cannot take care of themselves 399
in this capacity is to take care of unprotected infants and their property, and to appoint a guardian for the purpose 400
Spiritual benefit, of the late owner,
after his temporal enjoyment, his wealth should be applied for the purpose of 363
half (i.e. a sufficient portion) of his wealth should be reserved for the benefit of the deceased 88,363
Spiritual brother, that is, he who is engaged in the same pilgrimage or sojourns in the same hermitage takes the property of a hermit 312
Spiritual preceptor, (Acháriya) inherits in default of the remote kindred (samánodakas) 307
Srí-Krishna Tarkálandáka, author of the Dáya-krama sangraha, as well as of the celebrated commentary on the Dáya-bhága, and a paramount authority of the Bengal school 15,16,17 (pref.) 274
Sruti, (audition) the Vedas 1 pref.
Statute of Limitation. See limitation.
Step-brother,
can neither inherit in preference to, nor simultaneously with, an uterine brother, except the remaining undivided property, if any 203,1057
STEP-MOTHER,

is not an heir... 188,22
not entitled to a share on partition but to mainten-
ance (see maintenance)... 48

STRĪ-DHAN, defined 681—68
the diverse descriptions of— 686,695,696,69
the extent of the woman’s and her husband’s power
over particular kinds of— 68
can be taken by him even without the occurrence of
distress, if obtained by her from any other than
the family of her father, mother or husband, or gained by
the exercise of an art. Save and except the above, and
the property given by the husband, the woman is at
liberty to dispose of all other descriptions of Strī-dhan
independently of her husband, who has no power to
take the same without being in distress. 687 et sequ. 692,693,694
695,696,697,698,699,70

can be taken by the husband in a famine or other
distress or for the performance of a religious acts in-
dispensably necessary, even though it be of absolute
nature, and he is not liable to make good that prop-
terty to her, unless he has another wife, in which
case he shall be compelled to restore the property to
her though amicably lent to him... 689,691

movable property given as—by the husband can be
disposed of by the woman after his death, but she has
no power, even after his death, to dispose of at pleasure
the immovable property given by him as—... 688,689,698,699,64

promised to a woman by her husband, must be deli-
vered by his sons, provided she remain with the
family of her husband, and does not, for unchaste
purposes, go to reside with her own relations... 69

ORDER OF SUCCESSION,

to—left by a maiden daughter... 70

to the jouataka description of—... 708—714,729,73

to the a-jouataka description of—... 715,717—723,728,73

to—given by a father... 73

to a childless woman’s—given by her parents
before marriage and received as a fee, gratuity
or subsequent gift... 722,723 & 73

to—in default of heirs as far as the husband,
father, mother, and brother to any description
of—left by a woman married according to any
form of marriage... 723—728,73
ORDER OF SUCCESSION—(continued)

... according to the North Western and Southern schools ... ... ... ... ... ... ... ... ... ... ... ... 1042
inherited by a woman, ceases to be her stři-dhan,
and is treated as the ordinarily inherited property,
and as such, it descends, after her death, on the heir
of the former owner ... ... ... ... ... ... 730,731,732
table of succession to the diverse description of— ... ... 733

STUDENT IN THEOLOGY,

if professed or perpetual, is succeeded to by his (spiritual) preceptor ... ... ... ... ... ... ... ... ... ... ... ... 312,313
if temporary, is succeeded to by his father and other relations ... ... ... ... ... ... ... ... ... ... ... ... ... ... 313

SU-BODHINI, Šrī-krishna's celebrated commentary on the
Dāya-bhāga. ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ......
Temporary Student. See student in theology.
Testament. See will.

Testamentary power (of Hindoos) ... 552 et sequ. 1061
its extent must be regulated by the Hindoo law 581
not restricted in devising the estate in perpetuity ... 584, 585

Things (effects or property,)
liable to partition ... ... 500 et sequ.
exempt from partition ... 503 et sequ. 526—529

Title,
a more powerful evidence than possession unaccompanied by hereditary succession ... 601
not weighty where there is not the least possession 601, 602

Tonsure (the ceremony of boring through the ear,)
the primary season for ... ... 860

Treti, the second age of the world according to the Hindoos (see ages of the world) ... 3 pref.

Tribes. See castes.

U

Unchaste. See adulterous woman.

Unchastity,
causes exclusion from, or forfeiture of, inheritance and maintenance, unless already ceased to exist and expiated by penance (see adultery) 28, 32, 201, 371, 375, 1016

Uncle,
paternal, inherits on failure of the paternal grand-father ... ... 289
maternal, inherits on failure of the maternal grand-father ... ... ... 297, 301

Undivided Estate. See joint property.

Undivided Family or joint family, how to be ascertained (see dubious partition) 540—542, 543 et sequ. 582
the mere division of income, for the convenience probably of the different members of the family, does not amount to the division of the family ... 543, 582
a member of an—may by his separate exertion, acquire separate property for his sole and exclusive benefit (see property and acquirer) ... ... 524

Unequal Partition, can be made by a father only of his self-acquired or recovered property 413 et sequ.
LVII.

Un-initiated brother and sister (i.e. the deceased's son and daughter),

must be initiated at the expense of the patrimony or joint-stock... 365

Unmarried,

brother and sister, must be given in marriage at the expense of the patrimony or joint stock... 365
daughter, (without a brother and mother) takes the inheritance to the exclusion of other daughters... 166,172,1062
daughter, is succeeded to, in the inherited property, by her own son according to the Dāya-krama-sangraka followed by Macnaghten, and a recent decision of the High Court... 167,1062
daughter and sister have claims to receive from the deceased's estate not only maintenance, but also nuptial expenses... 370

Un-separated co-parcers,

may singly or collectively dispose of his or their respective shares in the joint estate... 593,594,595,596

while minors and incapable of giving consent to an alienation, even one, who is capable, may conclude a sale and the like of the joint property (including other's shares) if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties make it unavoidable... 597

where not incapacitated by minority and the like to give consent, and not absent, there the consent of—to an alienation of the joint property, though made for any of the allowable causes, is necessary for the validity of the transaction... 597

circumstances under which a sale of the paternal estate by the eldest son during the minority of the brothers is valid... 598

Upa-kurvāna brahmachārī. See temporary student in theology.

Upa-nayana, investiture with the sacred thread,

the primary season for... 860

the secondary season for... 860

Usage. See custom.

V

Vaivaswata Manu, supposed to be the same as Noah. See Manu the VII.
LVIII.

Valor, gains by, how to be divided or enjoyed... 501

Vânaprastha. See hermit.

Verbal,

gift, mortgage or other disposition, as good as that made by a deed... 600, 602, 610

gift or will, valid, provided the donee was of sound disposing mind at the time (see gift)... 610, 703

mortgage of immovable property for ten years, valid, provided such property remain in the hand of the mortgagee... 610

Vigyañeshwara, author of the Mitaksharā... 12 pref

Viváda-bhangárnaya, Jagan-natha’s Digest of Hindu law, the translation whereof is commonly called Colebrooke’s Digest... 24 pref

Voluntary Abandonment, causes extinction of right... 2 (note,) 9, 78, 109, 128

Vyāvahāra, civil acts and rules... 1 pref

Vyāvahāra kānda... I pref

W

Ward. See guardian.

Waste,

by a female, defined... 48

of the inherited property, by a female, prohibited... 48

must be satisfactorily proved before the Court of justice should interfere... 59, 124, 142

Widow, (patnā) of the late owner,

inherits, in default of the son, son’s son and son’s grandson (in the male line) and performs obsequies of the deceased... 23—28, 30, 31, 33, 34, 35

if unchaste, is not entitled to inherit her husband’s estate or to have maintenance therefrom, not also from her husband’s brothers, even though she may have resigned her right to his property in their favor, in consideration of such maintenance. 28, 29, 32—37 157, 37

previously committing adultery which remained unexpired by penance, forfeits inheritance as well as maintenance... 101

as heir to her husband, takes such property, as he died possessed of, or had a vested interest in under a will or deed, and not such as would have devolved upon him had he outlived its (present) owner... 37, 38, 1016
Widow—(continued.)

if two or more, they inherit in equal portions, and upon the death of one, the other succeeds to the property inherited and left by the deceased ... 41, 42, 43.
of two brothers, inherit in equal shares ... 36

the term—intends or includes any female entitled to inherit ... 47, 93, 97, 109, 124, 128, 171, 172
can only enjoy her husband’s estate with moderation, and is not competent to make a gift, mortgage, sale or other disposition thereof, which, if made (without a legal cause or necessity,) is invalid; after her death, the heirs of her husband would take it ... 45, 46, 62, 64,

if unable to live in her husband’s family, because of oppression, or for a just cause, may betake herself in the family of her father and the rest, provided her change of residence be not for unchaste purposes ... 47, 70, 89, 97

cannot make waste of her inherited property even though there be no reversionary heir other than the ruling power, she being always under control ... 48, 157

if unable to subsist, can mortgage the inherited property, if still unable, may sell it ... 49, 60, 71, 73, 75, 85, 89, 97, 109, 135, 157

a gift or other alienation is permitted to—for the performance of obsequies &c. 49, 60, 68, 71, 73, 75, 85, 89, 97, 129, 135, 157

may give a portion (i.e. from one to three annas) of the estate to the relations of her husband for the benefit of his departed soul, and, with their consent, to her own relations also ... 49, 50, 51, 60, 68, 71, 73, 75, 85, 89, 97, 129

is subject to the control of her husband’s kin after his decease with respect to alienation and other matters ... 51, 52, 53, 78, 85, 88, 97, 109, 157, 403.

nevertheless, for the liquidation of her husband’s debts, for his daughter’s marriage, for the support of the persons who must be supported, for the defrayment of expenses absolutely necessary, likewise for the performance of such other acts (including payment of revenue) as are beneficial to his soul or very necessary to be performed—is competent, even without the consent of the reversioners, to make a sale or other disposition of the whole or any portion of her husband’s estate ... 54, 55, 61, 71, 74, 75, 76, 78, 89, 97, 104, 147, 157,

for the performance, however, of such religious acts as, though beneficial to her husband, are optional—may dispose of only a small or moderate portion (from one to three annas) of the estate ... 55, 61, 71, 70, 73, 75, 97, 147
Widow—(continued)

the disposition by—of the whole of her husband's property even with the consent of his heirs to a person other than the next heir, unless it were to confer the greatest spiritual benefit on the husband, is an irreligious and immoral act, though valid ... 57,62,88,363

but a gift or alienation by—of a moderate portion (from one to three sixteenths) of his husband's property for his spiritual benefit, is religious, and moral, as well as valid ... 57,60,61,68,88,89,97

cannot alienate her husband's estate, without the consent of the reversioners, if they supply or agree to supply her with proper wants and expenses for the performance of the necessary as well as optional religious acts ... ... ... ... 56,61,97

cannot alienate her husband's estate for the performance of the necessary acts, if those could be performed with the wealth and income of that estate, nor can it be sold for such acts, and not also on account of the debt contracted by her at her own pleasure or for any optional act of her own... 57,76,77,78, 84,85,89,97,643

the disposal of her husband's property at pleasure otherwise than for the spiritual benefit of her lord, is invalid 57,61,62,84,85,89,97,134,135,136,137,138,142,157

at present, however, the disposition of her husband’s property, though not made for an allowable cause or legal necessity, is held invalid only when it is not consented to, or ratified by, the next heir or reversioner of her husband 57,62,67,78,89,97,129,133,134,135,138,157

it has also been determined that with the consent of the then next heir—may dispose of the property for any purpose, and if unable to manage, or unwilling to possess, she may give or make it over to such heir, and such disposition is valid, provided the title of persons who would prove to be her husband's heirs at the time of her death not be equal or preferable to that of the donee, as otherwise the transfer would be invalid in whole or in part, as the case may be 58,69(note,) 78,85,89,97,107,108,109,123,129,147,614

the fact of her having recovered her husband's property by litigation gives no additional power over it ... ... ... ... ... 59,63,78

should not alienate all her own acquisitions made by means of the inherited property ... ... ... 60,64
Widow—(continued,)

is prohibited to make waste or improper expenditure of the movable as well as of the immovable property of her husband, there being no difference between them when inherited by a woman ... 60,97,133

the husband's immediate reversioners are entitled to interfere and prevent waste or any wrongful alienation by—not previously consented to, or subsequently ratified, by them the heirs next after them can also do it with the consent of the former or on proof of their collusion with the widow... 45 (note,) 58,71,118,119, 78,75,78,85,89,97,120,121,122,124,129,142,147,149

the alienation made by—being set aside, not her husband's heir, but she is entitled to resume possession of the property, if she has not already done any act involving exclusion from inheritance 58,97,137,142,1068

on proof of her having made waste, and the estate being in the danger of being lost to the reversioner, unless prevented by the court of justice, the latter may step in with a view ofremedying or preventing the waste, and take the management of the property from her to secure the estate for the ultimate heir ... ... ... 59,97,120,124,134,135,177,142

according to some of the Judges, any arrangement, settlement or alienation by—of her husband's property, should remain unreversed until her death, the reversioner, however, may have the remedy even during her lifetime, against the grantee to prevent waste or destruction of the property ... 60,125,125,147,148,149

on the death of—those of the nearest relations of her husband who survive her are alone entitled to inherit 159,162,214

of a daughter's son, does not inherit... ... ... ... 176

of a son, does not inherit, but is entitled to maintenance ... ... ... ... ... ... 373

whose husband died before his father, has a legal claim to maintenance only ... ... ... ... 376

of a separated brother, is not entitled to maintenance from her late husband's family ... ... ... 377

Wife (pains) defined, ... ... ... ... ... ... 40

duties of—towards her husband ... ... ... 674 et sequ.

may desert her husband, when he is an outcast or degraded ... ... ... ... ... ... 677
WIFE—(continued.)

can enter into contracts for the support of the family during the absence or disability, mental or corporal, of her husband ... ... ... ... ... ... 641

can sell her insane husband's property for the performance of the funeral obsequies of her mother-in-law ... ... ... ... ... ... ... ... 615

not compelled to pay a debt, unless contracted for the family ... ... ... ... ... ... ... ... ... ... ... ... 360

debts of— are to be paid by her husband, provided they were contracted for the support of his family, or in managing his affairs ... ... ... ... ... ... ... ... ... ... ... ... 360,362

must be maintained, if chaste (see maintenance) ... ... ... ... ... ... ... ... ... ... ... ... 55

forfeits her right to maintenance, if unchaste (see maintenance) ... ... ... ... ... ... ... ... ... ... ... ... 371,372,375,390

by voluntary desertion of her husband loses her right to maintenance ... ... ... ... ... ... ... ... ... ... ... ... 374

expelled or deserted without a cause, must have maintenance from her husband, and from his estate after his death ... ... ... ... ... ... ... ... ... ... ... ... 374,392

if without a son—entitled to a share on partition by her husband ... ... ... ... ... ... ... ... ... ... ... ... 424

POWER OF—

over the share received from her husband during coverture ... ... ... ... ... ... ... ... ... ... ... ... 2 (note,) 641

during the absence or disability of her husband 641,615

WILL, (of Hindus) defined, ... ... ... ... ... ... ... ... ... ... ... ... 563,565 (note.)

how introduced in Bengal ... ... ... ... ... ... ... ... ... ... ... ... 791 (note.)

may be made by a man having sons and heirs, and the disposition thereby made of his possession, inherited or acquired, real or personal, even by preventing, altering or affecting the legal heir's succession to such property, will hold ... ... 552,568 et sequre. 593

the late Sudder Court's opinion in the matter of— 568

Mr. H. Colebrooke's opinion on the subject of—552 (note,) 565

Sir William Macnaghten's opinion against the legality and validity of— ... ... ... ... ... ... ... ... ... ... ... ... 555—565 (notes.)

the great Nudda case and the other leading cases relating to— ... ... ... ... ... ... ... ... ... ... ... ... 553,554 et sequre.

admitted legal opinions or precedents approved of, and published by Sir William Macnaghten in favor of a Hindoo's testamentary power ... ... ... ... ... ... ... ... 570 et sequre.
LXIII.

WILL—(continued,)

... to be construed according to the testator's intention ... 589
which is primarily to be collected from the words of—to which meaning is to be attached according to the local law and so forth... ... 78,1048,1068

WITNESS, when a reversioner or next heir, effect of...

WRITTEN PROOF OR WRITING,

... is stronger than parol evidence, and where there are both parol and written evidence, the writing must prevail as being the more certain evidence ... 44
is not necessary in gift and adoption (see gift)... 702,762,777

Y

YATI or JATI or Sanyāśī, (ascetic, anchoret, or travelling devotee,) excluded from inheritance... 9,10,997,1003
state or condition of ... 654 (note.)

YUGA or JUGA, an age or epoch,

four according to the Hindoo system of chronology,

viz. the Satya, Tretā, Dwāyēpara and the Kali.
(See ages of the world.) 3 pref. 999 (note.)

Z

ZEMINDAREES, if large, are, in the official language, considered as tributary principalities 19 (note.)