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OF

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BY

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CHAP. XIII.

MALABAR LAW.

370. In the province of Malabar, among the great body of its inhabitants, a different rule of descent prevails from what exists in the other Districts of the Presidency, Canara excepted. **The inheritance runs in the female, not in the male line. A man's sons are not in the list of his heirs. His property goes to his sisters; sister's sons; sister's daughters; sister's daughter's sons and daughters; mother; mother's sisters; their children; and to his maternal grand mother; her sisters; and their children. Failing these and their stock in the same way of descent, it goes, as in the other parts of the presidency, to the man's disciple, and fellow student; and then escheats.**

Descent in female line.

371. This rule of descent is termed *Maroomakayam*, or Nepotism in the female line. **The origin thereof is conceived to have been thus. It is alleged that Parasooramen, the first King of Malabar, introduced Brahmins into the district, and gave them possessions therein, and to prevent these properties from being split up, decreed that they should vest in the elder brothers, whom alone he permitted to contract marriage. The sons of these were to be accounted as sons for the whole family. The junior brothers being without wives were allowed to consort with females of lower castes. The offspring of these unions not being legitimate could not take rank as Brahmins, or inherit from their fathers. Their inheritance was hence made to follow from their mothers. The lower castes fell into the same system of promiscuous intercourse**

Origin of rule.

among themselves. With them the females before attaining maturity go through a form of marriage, the bridegroom not necessarily taking the position of husband. After maturity they may consort with whom they please, and with as many as they please, provided that the connexion be with members of their own or some higher caste. The offspring succeed to the estate in the mother's family, it being obvious that parentage cannot be traced out in the line of the male.

The classes governed thereby.

372. The castes that follow this rule of *Maroomakatayam* are all excepting Brahmins and Aka Podwals, a class of Pagoda servants, the artisans, namely carpenters, brass-smiths, black-smiths and gold-smiths, and some of the lowest denominations, such as the Cheromars, or slave tribe, the Malayers and the Paniars, with whom the rule of descent is to sons. The Teears, or toddy drawers, and the Mookwas, or fishermen, of North Malabar follow *Maroomakatayam*, while those to the South observe *Makkatayam*, or descent to sons. In North Malabar most of the Moplas, although Mahomedans, follow also the rule of *Maroomakatayam*, in this respect having conformed to Hindoo usage in the times of the ascendancy of the Hindoos.

United families.

373. The adherents to *Maroomakatayam* form united family communities termed *Tarwaads*. The remotest member is acknowledged as one of the family if living under subordination to the head of the family and taking part in their religious observances. The senior male of whatsoever branch is the head of the family and is termed *Karnaven*. The other members are termed *Anandravers*.

Succession as *Karnaven*.

374. The position of *Karnaven* belongs to the

senior relative of the deceased *Karnaven*, and not to the nearest in blood to the deceased. For example, a mother's sister's daughter's son being the senior is preferred to a mother's sister's son (Decree of Sub. Court of Calicut in Appeal No. 39 of 1843). He would be so also to a sister's son who is the nearest in descent.

375. The head of the family has entire control over the concerns and property of the family, to which he has to administer for the good of the whole. The unity of the family may not be broken up by any member claiming his share and forcing on a division; or incurring debt and charging this on the property (Decree of S. U. in appeal No. 28 of 1814; of late Zillah Court of Malabar in S. A. No. 1 of 1842; of Civil Court of Calicut in appeal No. 36 of 1848; Pro: of S. U. 13th February 1854).

Division cannot be claimed.

376. Division, if to be made, cannot be effected through process of law, or at the demand of a creditor. The members of a family may however by mutual consent come to a division among themselves, and the Courts would uphold such division. In the event of an individual being wronged on such division taking place the Courts would furthermore doubtless give a remedy.

It may occur by consent.

377. The basis of such a division would be according to the *Taveries*, or branches of the family. That is, the property would be divided primarily according to the number of the sisters of the common ancestor, these giving rise to the branches, and afterwards among their progeny.

The basis of a division.

378. The *Karnaven* can alienate all moveable property, ancestral or self acquired, at his discretion. But

Power of *Karnaven* to alienate.

as to immoveable property, whether self acquired or ancestral, he must have the written assent of the chief *Anandravers*, (Decree of late Pro. Court Western Division in Appeal No. 27 of 1839 ; of late Zillah Court of Malabar in S. A. No. 29 of 1840 ; of S. U. in Appeal No. 5 of 1845).

379. The absence of concurrence of an *Anandraven* living in discord with the *Karnaven* would not however vitiate the act of the *Karnaven* in alienating immoveable property, the rule requiring the assent of the *Anandravers* to such alienation implying that the family is a united one (Decree of late Zillah Court of Malabar in S. A. No. 29 of 1840).

— to in-
cur loans. 380. A *Karnaven* may raise money on mortgage for the use of the family without the assent of the *Anandravers*. It is only in making absolute alienation that their concurrence is necessary (Decree of S. U. in Appeal No. 5 of 1845).

381. The signature of the *Anandravers* is not required to give validity to bonds executed by the *Karnaven* (Decree of S. U. in Appeal No. 41 of 1846 ; and in Appeal No. 38 of 1852).

Liability of
family pro-
perty. 382. Debts, to be chargeable on the family property, must have been contracted for the uses of the family by the *Karnaven*, or other member managing under his sanction. The debts of individual members cannot be charged on the property (Decree of Civil Court of Calicut in A. No. 36 of 1848 ; and of S. U. in A. No. 38 of 1852, and Nos. 48 and 49 of 1854).

383. The family property is not liable for a debt contracted by the head of the family for his own use (Decree of S. U. in Appeal No. 37 of 1844).

384. The debtors estimated share in the family property is not liable for individual debts (Pro: of S. U. 5th August 1850).

385. A debt contracted by a *Karnaven* would be presumed to have been one for the uses of the family, and chargeable on the estate, until the contrary might be shown; and one by an *Anandraven* would be presumed to have been an individual obligation, not so chargeable unless otherwise proved.

386. A *Karnaven* may be superseded for incompetency (Decree of Civil Court of Calicut in A. No. 36 of 1848). The causes which will disqualify the *Karnaven* are loss of caste, old age, deafness, blindness, dumbness, madness, disgraceful conduct, and dissipation of the family means. When put aside, whether by the family or by force of legal measures, he is to be replaced by the next senior competent male member.

Supersession of *Karnaven*.

387. Self acquired moveable property, namely that which is obtained by individual exertion and without aid from the family funds, belongs exclusively to the acquirer and may be disposed of by him at his pleasure. Females may hold it as well as males. On demise it descends in the case of males to their sisters' sons, or nearest *Anandravers* (Decree of Sub: Court of Calicut in A. No. 320 of 1852), and in the case of females to their issue male and female.

Self acquired property.

388. There is nothing analogous to the state of widowhood as elsewhere existing. Females, whether in alliance with males or not, reside in their own families.

Widowhood.

389. In theory the property is held to vest in the females only, the males having right of management and claim to support. Practically the males are

Management of property by females.

cosharers with the females. In default of males females succeed to the management of the family property. In some families the management devolves on them preferably to the males, and in such case the senior female takes it.

Maintenance

390. All members of the family, even the remotest, are entitled to maintenance.

Adoption.

391. On failure of the sister's progeny, male and female, the head of the family may make adoption. The descent being in the female line the adoption must be of a female. In view of the probable minority of her offspring at the period when the management may fall in, a male, her brother, may be taken in adoption at the same time with herself, in order to afford provision for the administration of the affairs of the family, and for conduct of the religious rites to be observed therein.

The rule of nepotism obtains in Canara.

392. In Canara a similar system of inheritance obtains which is termed *Alya Sautan*. As in Malabar the Brahmins do not follow this rule. In its details the law of *Alya Sautan* corresponds with that of *Maroomakatayam* saving that the principle that the inheritance vests in the females in preference to the males is in practice better carried out in Canara where the management of property vests ordinarily in the females, while in Malabar the males commonly administer thereto.