

A D D E N D A.

A SYNOPSIS OR GENERAL SUMMARY

OF THE

HINDU LAW ACCORDING TO THE MITACSHARA.

THE Hindu Law of Inheritance, according to the *Mitacshara*, may be classified under the following heads:—

First.—Heritage (Daya) or that wealth which becomes the property of another solely by reason of relation to the owner. (Ch. I, Sec. 1, v. 2.)

Second.—The time when, and the manner in which, this wealth becomes the property of another.

Third.—Who these persons are to whom such wealth goes, their rights and shares, and the order in which they take such rights and shares.

Right of Property.

1. Definition and division of heritage (Daya) (Ch. I, Sec. 1, v. 2, 3.) Definition of partition; paternal estate and son. (Ib. v. 4, 5.)

2. Disquisition on property; mode of acquisition. (Ib. v. 7 to 11.)

3. Ownership is by inheritance, purchase, partition, seizure or finding. (Ib. v. 12, 13.)

4. Property in the paternal or ancestral estate is by birth, (Ch. I, Sec. 1, v. 27), and not by demise of the last owner. (See Ib. v. 22, 23.)

5. Exception in case if the father be alive and separate from the grandfather, or if he have no other brothers. (Ch. I, Sec. 5, v. 3.)

6. Not so in case of a nephew. His right is by the owner's demise. (Ch. II, Sec. 4, v. 7, and note.)

7. The father has an absolute right over moveables. (Ib. v. 21.) But not over immoveable property or bipeds. (Ib. v. 27.)

8. In ancestral property the right of father and son is equal (Ch. I, Sec. 5, v. 1, 3, 5.) The son can compel a partition against the father's will, and prevent a sale or gift thereof being made by the father. (Ch. I, Sec. 5, v. 7, 8, 9.) But not so in property acquired or recovered by the father (Ch. I, Sec. 5, v. 9, 10, 11.) But he has no right to portion allotted to the parents or property acquired by the father after partition, if afterwards there be a son born. (Ch. I, Sec. 6, v. 1, 2, 4, 5, 6.) But not so in case of re-union. (Ch. I, Sec. 6, v. 7.)

9. Sale of immoveables is forbidden, except under certain circumstances. (Ib. v. 27, 28, 29.)

10. Consent of unseparated kinsmen is necessary to pass land by gift, sale, or mortgage. (Ib. v. 30.) Formalities necessary to pass land. (Ib. v. 30, 31.)

11. The rights of father and son are equal in ancestral property, but the allotment of shares amongst grandsons by different fathers is according to the fathers. (Ch. I, Sec. 5, v. 1, 2, 6.) A grandson can compel partition of the grandfather's property although the father be unwilling. (Ch. I, Sec. 5 v. 5, 11.) He has also a right of prohibition to a donation or sale of effects inherited from the grandfather. But not so in effects acquired or recovered by the father. (Ch. I, Sec. 5, v. 9, 10, 11.)

Effects not liable to partition.

1. "Whatever has been acquired by the co-parcener himself without detriment to the father's estate, as a present from a friend, or gift at nuptials. (Ch. I, Sec. 4, v. 1, 2, 10.)

2. Hereditary property which had been taken away, but recovered by the exertions of some of the co-parcener,* and without detriment to the father's estate. (Ch. I, Sec. 4, v. 1, 2, 6.) Except in case of land, when the person who recovers, takes one-fourth, and the remainder is equally shared by all the brethren. (Ch. I, Sec. 4, v. 3.)

3. What has been acquired by science † without detriment to the father's estate. (Ch. I, Sec. 4, vs. 1, 2, 5, 6, 10.)

* See *Bissessur Chuckerbutty vs. Seetul Chunder Chuckerbutty*. 9 W. R., p. 69; 5 Wym., p. 201. *Appendix*, p. 84, case 15.

† See *Chalakonda Alasani vs. Chalakonda Rathachalam*. 2 Stokes, p. 56; *Appendix*, p. 76, case 9.

4. Clothes which have been worn and ornaments worn by the father as well as his vehicles. (Ch. I, Sec. 4, v. 17.) Also the horses and the like, if they cannot be divided. Also a single goat or sheep or beast with uncloven hoofs, for they belong to the eldest brother. (Ch. I, Sec. 4, v. 18.)

5. The ornaments worn by each person are his. (Ch. I, Sec. 4, v. 19.)

6. Prepared food, &c. (Ch. I, Sec. 4, v. 20.)

7. Water or reservoir of water ; female slaves ; the common way or road of ingress and egress. (Ch. I, Sec. 4, v. 21, 25.)

8. Special Rule. Effects not liable to partition between sons by a Brahmani woman and those by women of inferior tribes. "Land obtained by acceptance of donation must not be given to the son of a Cshatriya or other wife of inferior tribe." (Ib. v. 26.)

9. Whatever is acquired through the father's favor. (Ch. I, Sec. 4, v. 28 ; Sec. 6, v. 13 to 16.)

10. In case of acquisition at the charge of the patrimony, the acquirer gets a double share. (Ch. I, Sec. 4, v. 29.) But not so in case of improvement only. (Ib. v. 30, 31.)

Hermit's property.

A hermit may have property. His hoard for a day, a month, or a year ; an ascetic has his clothes, his books and other requisite articles ; and a professed student may have clothes and other effects. (Ch. II, Sec. 10, v. 8.)

Stridhuna or the separate property of a woman.

1. The definition of Yajnyawalkya of Stridhuna is "what was given to a woman 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 * as also any other separate acquisition," is Stridhuna. (Ch. II, Sec. 11, v. 1 to 6.) Separate acquisition is explained as acquisition by inheritance, † purchase, partition, seizure, or finding, (Ib. v. 2.)

* See Ch. II, Sec. 11, v. 34, 35.

† See *Punchanon Ojah vs. Salshun Misser*, 3 W. R., p. 140 ; Appendix p. 95, Case 6. *Sengamala Thammal vs. Valaynda Mudali*, 3-M. H. O. Rep. O'Sullivan and Mills, 312, Appendix, p. 96, Case 7. *Bhugwandeem Dobby vs. Myna Ball*. 9. W. R. Privy Council Rulings, Appendix, p. 96, Case 11.

2. Menu's enumeration of *Stridhuna*, or sixfold property of women. (Ch. II. Sec. 11, v. 4.)

3. Catyayana's definition of presents given to women before and after marriage, either as an affectionate gift or as a token of respect. (Ch. II, Sec. 11, v. 5, 6, 7.) These are woman's separate property. (Ib. v. 7.)

Time when partition may take place.

1. At the pleasure of the father (Ch. I, Sec. 2, vs. 1, 2, 3, 7.) But he has no power to make a distribution otherwise than ordained by law. (Ib. v. 13, 14.)*

2. When the father is indifferent to wealth, and the mother is incapable of bearing more sons, a partition is admissible at the option of the sons against their father's wish. (Ch. I, Sec. 2, v. 7.)

3. When the father is old, disturbed in intellect, disqualified by vicious habits, or diseased, although the mother be capable of bearing issue. (Ib., note.) Although the father retains his worldly affection, a partition can take place of the grandfather's estate by the will of the son. (Ch. I, Sec. 5, v. 8.)

4. The decease of the father. (Ib. and note, and Ch. I, Sec. 3.) After waiting for the delivery of the mother, or of such of the women as are pregnant, when such pregnancy was manifest. (Ch. I, Sec. 6, v. 12.)

Shares of sons and wives when partition takes place at the desire of the father.

1. When the partition takes place at the desire of the father, it may be equal (Ch. I, Sec. 2, v. 1,) or "he may separate the eldest with the best share, the middlemost with a middle share, and the youngest with the worst share." (Ch. I, Sec. 2, v. 3.) The rule of Menu is, that when the property is self-acquired the portion to be deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, quarter of that. (Ch. I, Sec. 2, v. 3, 4, 6.)

2. When the partition is equal, the wives to whom no separate property has been given must be rendered part-takers of like portions. (Ib. v. 8.) But if separate property

* This relates to property acquired by the father himself. (Ch. I Sec. 5, v. 7.)

have been given, half a share is to be allotted to her. (Ib.) In case of unequal partition, they are to receive equal shares of the aggregate, besides the furniture in the house and the ornaments. (Ib., v. 10.)

3. Separation of a son who can support himself, and is not desirous of participation, may be completed by giving him a "trifle," so that his sons or other heirs may have no future claim. (Ib., v. 11, 12.)

4. The father can keep a double share for himself (Ch. I, Sec. 5, v. 7.) This relates to property acquired by himself. (Ch. I, Sec. 5, v. 7.)

When partition takes place after the demise of the parents.

1. The shares of the sons are equal. (Ch. I, Sec. 3, vs. 1, 4, 6, 7.)

2. Except in the separate property of their mother in case there be daughters, "Let daughters share the residue of their mother's property, after payment of her debts." (Ib. v. 8.) But on failure of daughters, the sons divide both her debts and effects equally. (Ib., v. 12, 13.)

3. The widow takes an equal share, (Ch. I, Sec. 7, v. 1, 2.)

4. The uninitiated brother is to be initiated at the charge of the whole estate. (Ch. I, Sec. 7, v. 3, 4.)

5. Unmarried sisters are to be disposed of in marriage, by giving them as an allotment, a fourth part of a brother's share. (Ch. I Sec. 7, v. 5, 6, 7, 8, 9, 10, 11, 12, 13.) Thus an unmarried daughter participates in the inheritance after her father's death. (Ib., v. 14.)

6. The shares of sons by wives of different tribes are four, three, two and one; that is, the sons of Brahmana by Brahmani wife get four shares a-piece; those by a Cshatriya wife, three shares a-piece; those by a Vaisya wife, two shares a-piece; and those by a Sudra wife one share a-piece. So a son of Cshatriya by a Cshatriya wife three shares a-piece; those by a Vaisya wife two shares a-piece, the sons of a Sudra, one share a-piece, and so on, a person of one tribe not being allowed to marry higher than his own. (Ch. I, Sec. 8, v. 1, 2, 3, 4, 5, 6, 7.)

7. But not so in case of land acquired by acceptance of gift. (Ch. I, Sec. 8, v. 8.) The son of a Sudra wife by a man of the regenerate tribe gets no land, however acquired.

8. Effects which have been withheld by one co-heir from another, and which are discovered after separation, are to be divided equally, (Ch. I, Sec. 9, v. 1, 2, 3.) and not to be taken exclusively by him who discovers. (Ib. v. 3.)

Right of a son born after partition.

1. A son born after separation had taken place during the lifetime of the father, of a wife equal in class gets the portion which had been allotted to the father, as also to that of his mother, if there be no daughter. (Ch. I, Sec. 6, v. 1, 2, 4.) But he shares with such of the brethren as have re-united with the father. (Ch. I, Sec. 6, v. 7.)

2. But a son by a woman of a different tribe receives his own proper share, with the whole of the mother's property, if there be no daughters. (Ch. I, Sec. 6, v. 3.) Except gifts affectionately bestowed by either of the parents after separation. (Ch. I, Sec. 6, v. 13, 14.)

3. A posthumous son born after partition had taken place amongst the brethren gets a share equal with others of the same class. (Ch. I, Sec. 6, vs. 8, 9, 10, and note.) The share is to be raised by including in the several shares, and the income thence arisen after subtracting the father's debts, a small part is to be taken from the remainder of the shares respectively, and an allotment equal to the portion of the other brothers should be thus formed. (Ib. v. 10.) Except ornaments or other presents which has been affectionately bestowed by father or mother on any one of the children before separation took place. (Ch. I, Sec. 6, v. 13, 14, 15, 16.)

4. If a son be born to a brother's widow after partition had taken place amongst the undivided brethren, the son so born shall likewise take his share. (Ch. I, Sec. 6, v. 11.) So in case of reunion (Ch. II, Sec. 9, v. 1, 4, 6.) Reunion can take place only with a father, a brother, or a paternal uncle. (Ch. II, Sec. 9, v. 3.)

Of the persons who take the property of another and their shares.

Sons, principal and secondary.

1. The legitimate son or one born of a legal wife, of equal tribe. (Ch. I, Sec. 11, v. 1, 2.)

2. Son of an appointed daughter, the appointed daughter is considered to be of the third description of

sons. (Ch. I, Sec. 11, v. 1, 3.) *Putrica Putra* is of four descriptions (See note 3, verse of *Hemadri*, pp. 64-65) *Gautama* puts the son of an appointed daughter as the tenth in rank. But it relates to one differing in tribe. (Ch. I, Sec. 11, v. 35.)

3. The son of the wife, or one begotten on the wife by a kinsman of her husband. He is a *Dwyamushayana*, or son of two fathers by special compact. (Ch. I, Sec. 10, v. 1, 2, 3.) Otherwise he is the son of the husband, and not of his natural father. (Ib. v. 4, 5, 6; Ch. I, Sec. 11, v. 1.) He is inferior to the legitimate son, and is a wife's son or *Cshetraja*. (Ch. I, Sec. 11, v. 4, 5.)

4. A son of hidden origin, or one secretly produced in the house. (*Gud'haja*) (Ch. I, Sec. 11, v. 6, 39.)

5. A damsel's son, or child of an unmarried woman (by one of like class); he is considered as the son of the maternal grandsire, but, if married, he is considered as the son of the husband. (Ch. I, Sec. 11, v. 1, 7, 39.)

6. The son of a twice married woman by one of like class. (Ch. I, Sec. 11, v. 1, 8, 39.)

7. The adopted son, *Dattuca* or given by his parents. (Ch. I, Sec. 11, vs. 1, 9.) Two sorts: *first*, simple; and *second*, son of two fathers; *Dwyamushayana*. *Vyavahara Mayuc'ha*. See Note, p. 71.)

8. A son bought (*crita*) is one whom a man, for the sake of having issue, purchases from his father and mother. (Ch. I, Sec. 11, v. 1, 16.)

9. A son made, or one adopted by the man himself (*critrima*). (Ch. I, Sec. 11, v. 1, 17.)

10. Self-given son. (Ch. I, Sec. 11, v. 1, 18.)

11. Child accepted while yet in the womb by one of equal class. (Ch. I, Sec. 11, v. 1, 19, 39.)

12. The deserted son, or one adopted who had been forsaken by his parents (*Apavidd'ha*). (Ch. I, Sec. 11, v. 1, 20.)

13. The rule of Menu as to which of these sons are heirs and kinsmen, and those who are not heirs but kinsmen. (Ch. I, Sec. 11, v. 30, 31, 32.)

Shares of sons principal and secondary.

1. If a legitimate son be born after the appointment of a daughter as *Putrica Putra*, he takes an equal share with the daughter. (Ch. I, Sec. 11, v. 23.)

2. But in case of a legitimate son being born after adoption, or during the existence of other inferior sons, the

adopted or other inferior sons share a fourth part of the heritage if he be of the same tribe, that is, a son of the wife, a son adopted, bought, made, self-given, and deserted; but if he be of a different tribe, that is, the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son of a twice-married woman, he is entitled to food and raiment only. (Ch. I, Sec. 11, v. 24, 25, 26, 28. Special Rule, of Menu, v. 29.)

3. But if there be no legitimate son or other preferable heir, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the paternal estate. (Ch. I, Sec. 11, v. 21, 27, 33.)

4. The son of a *Sudra* wife does not take the whole estate, even on failure of other issue. He takes a tenth part. (Chap. I, Sec. 11, v. 41, 42.)

5. The son of a *Oshatriya* or *Vaisya* wife takes the whole of the property on failure of issue by women of equal class. (Chap. I, Sec. 11, v. 43.)

6. The son of a female slave partakes of a share of a *Sudra's* goods according to the father's choice, but on his demise he is entitled to half-share. (Ch. I, Sec. 12, v. 1, 21.)

7. The son of a regenerate tribe by a female slave does not obtain a share even by the father's choice, nor the whole estate after his demise. He is entitled only to maintenance. (Ch. I, Sec. 12, v. 3.)

The widow.

1. On failure of sons principal and secondary, as mentioned in Chap. I, Sec. 11, as well as of grandsons, the widow (lawfully wedded wife *patni*), succeeds to the estate left by her husband. (Ch. II, Sec. 1, vs. 2, 3.) "The widow of a childless man keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire estate. (Ch. II, Sec. 1, vs. 6.) Provided the husband died separated from his co-heirs, and not subsequently reunited. (Ib. v. 39; Chap. II, Sec. 9, v. 1, 5, 6.)* The eldest wife being eldest by good qualities may take the whole of her husband's estate and maintain his other wives. (Ib. v. 38.)†

* *Quero.*—In case of a person dying unseparated from his father, mother, and brethren, and possessed of separate property, who should be his heir—his father or his mother, and in case of a person dying unseparated from his mother or brethren, whether the mother or brothers of the whole blood would take first.

† See *Musst. Indubunsee Koonwar vs. Gribhirun Koonwar.* 3 B. L. R., A. C., p. 289.

The daughter.

1. On failure of the widow, the daughters inherit. (Ch. II, Sec. 1, v. 2 ; Sec. 2, v. 1.) The participation is equal or unequal according as they are alike or dissimilar by class. (Ch. I, Sec. 2, v. 1.)

(1.) The unmarried daughter. (Ch. II, Sec. 2, v. 2, 3.,

(2.) The married daughter (Ch. II, Sec. 2, v. 3.)

2. If the competition be between unprovided and enriched daughter, the unprovided one takes the inheritance ; on failure of her, the enriched daughter. (Ch. II, Sec. 2, v. 4.) But if there be an appointed daughter, neither married nor the unmarried daughter succeeds. (Ch. I, Sec. 2, v. 5.)

Quere.—When the competition is between an unmarried but enriched daughter, and a married but unprovided daughter ?

Daughter's sons.

1. On failure of daughter, the daughter's son succeeds to the estate. (Ch. II, Sec. 2, v. 6., The grandsons take *per capita* and not *per stirpes*. See *Ram Suruth vs. Baboo Basdeo*. (2. H. C., N. W. P., Rep., p. 168 ; Appendix, p. 51, case 33.)

The parents.

1. The mother. (Ch. II., Sec. 3, vs. 1, 2, 3, 4.) The stepmother cannot take by inheritance from her stepson.*

2. The father. (Ch. II., Sec. 3, v. 1, 5.)

Brethren and their sons.

1. On failure of father, the brethren share the estate. (Ch. II., Sec. 4, v. 1.)

2. The brother of the whole blood. (Ch. II., Sec. 4, v. 5.) But in case of reunion or if a brother dies unseparated they take before the widow. (Chap. II., Sec. 9, vs. 1, 2, 4, 5, 6. Chap. II., Sec. 1, v. 39.)

3. On failure of uterine brother, those by different mothers inherit the estate.† (Ch. 2, Sec. 4, v. 6.)

* *Quere.*—Do all the step brothers born of stepmothers of different tribes succeed together, or do they take according to the rank of the superior or inferior class of their mothers ?

† *Lalla Johee Lall vs. Deo Baneekoonwar*. *Sevestre Con. Mar.*, p. 439. Full Bench Ruling in S. N. W. R., p. 173 ; Appendix, p. 53, case 46.

4. In case of reunion, or if a half-brother dies unseparated, they take before the widow. (Ch. II., Sec. 1, vs. 39 ; Ch. II., Sec. 9, v. 1, 2, 4, 5, 6, 7, 8.) But if there be a uterine brother not reunited, and a half brother who is reunited, all the brethren take equally. Ch. II., Sec. 9, v. 10, 11, 12, 13.)

5. The uterine sisters also participate. (Ch. 2, Sec. 9 v. 12, 13.)

6. Some authorities include *sisters, brethren* meaning *brothers* and *sisters*. See note Ch. II., Sec. 4, v. 1 ; See Venayek Anundrow vs. Luxamee Bai, 9 M. I. A., p. 5, 16, case No. 56, appendix, p. 54, and other cases therein noted.)

7. On failure of brethren their sons succeed in the order of their respective fathers as brother of the whole or half-blood. Ch. II., Sec. 4, v. 7.) But in case of competition between brothers and nephews, the brothers, although half-brothers take the inheritance, though there be nephews of the whole blood (Ch. 2, Sec. 4, v. 7, 8, and note.) They take *per capita*, and not *per stirpes*. In case there be a competition between a separated brother and an unseparated nephew, the nephew takes in presence to the brother. See Kesabram Mohaputher vs. Nandkishor Mohaputher. 3 B. L. R., A. C., p. 7.

Stridhuna.

The succession to the separate property of a woman is regulated by the mode of her marriage. (Ch. II, Sec. 11, v. 10, 11.)*

1. In all the forms of marriage, the property first devolves on her daughters. (Ch. II, Sec. 11, v. 12 ; Ch. I, Sec. 3, v. 8, 9, 10.)

2. Rule of Gautama. When the competition is between a married and an unmarried daughter, the property goes to the unmarried daughter. When the competition is between two married daughters, one endowed and another unendowed, the property goes to the unendowed daughter. (Ch. 1, Sec. 3, v. 11.) This distinction is also laid down in Ch. II, Sec. 2, vs. 3, 4.

3. *First*, unmarried daughter ; *Second*, unprovided daughter, that is, destitute of wealth or issue ; *Third*, married endowed daughter. (Chap. II, Sec. 11, v. 13.)

* As in Kali Yoga, only the four unblamed modes of marriage—*viz.*, *Brahma*, *Daiva*, *Arsha*, and *Prajapatya*, are allowed the heirs according to the prescribed forms of marriage, have not been enumerated here.

4. (On failure of daughters) daughter's daughter. (Ch. II, Sec. 11, v. 9, 12, 15.) If there be a multitude of them, they take *per stirpes*, and not *per capita*. (Ib. v. 15.) See Ch. I, Sec. 5.) If there be daughters living, a trifle will be given to them. (Ib. v. 17.)

5. The daughter's sons.* (Ib. v. 18.)

6. Sons. (Ib. v. 19.)

7. Grandsons. (Ib. 0-24.)

8. The step daughters by a rival wife of a superior class are mentioned as heirs, but their place in the line is doubtful. (Ib. 22, 23.)

9. On failure of these the husband and relatives or nearest kinsmen allied by funeral oblations, as mentioned in Ch. II, Sec. 11, v. 9, 11. take the inheritance.

10. The heir of a damsel who dies after being affianced is the bridegroom to such of the articles as have been presented by him (Ch. II, Sec. 11, v. 29, 30) after payment of charges on both sides. But her uterine brothers take along with the bridegroom. But when not affianced, her brother is the heir.

11. The husband has a power over the separate property of his wife during her lifetime, in case of a famine, or for the performance of a duty, or during illness, or while under restraint. (Ch. 2, Sec. 11, v. 31, 32.) †

MITACSHARA.

ACHARADHAYA.

Chapter on Marriage.

1. After having studied the Vedas, and performed the duties of a Brahmachari, or having done either, and having made a gift to the Gooroo, the student shall ask his permission and perform an ablution.

2. After having either finished his studies of the Vedas, or having performed the duties of a Brahmachari in the manner as before prescribed,† or both, the student shall give wealth to his Gooroo, or, according to his ability, something for which the Gooroo may express a desire, and then perform the ablution. But when the student is incapable of giving anything to his Gooroo, then to perform the ablution after receiving his permission.

3. What is he to do after the performance of the ablution?

Answer.—After having studied the Vedas, and performed the duties of a Brahmachari, he shall marry a spotless maid.‡ He shall marry one who is not an Annoboorbicà, a Sâpindâ, &c.

4. A *Sâpindâ* is one who is of the same *Pindâ* (or body) as the son is of the body of his father, so the grandfather, || and his ancestors are related to the father and with each other in *Pindâ* or body, and as the person is related to his mother in *Pindâ* or body, so, through the mother, he is related in *Pindâ* to the maternal grandfather.¶ Therefore a person is related in *Pindâ* to the sisters and brothers of his mother. Accordingly, he is related to the brothers

* Do they take *per capita* or *per stirpes*.

† See Ramasami Padiyatch, *vs.* Virasami Padiyatchi. 3 M. H. C. Rep., p. 272; Appendix case 9, p. 96.

‡ In the book on the duties of a Brahmachari. Mitacshara Acharadhaya, Chapter I.

§ *Luc'hányāng striom Oodhohayt.* A girl without a blemish, possessing all the external and internal beauties. (Here follows the details of the several virtues which are to be sought after in the choice of a wife, but which are here omitted as being beyond the scope of the present work.)

|| *Petamohâdeviropi*—Paternal grandfather and the rest, meaning ancestors commencing from grandfather.

¶ *Matamohâdeviropi*, maternal grandfather and the rest, meaning ancestors commencing from maternal grandfather.

and sisters of his father. Accordingly, a person is related by *Pindâ* or body to his brother's wife, for a man and wife are of the same body. And, accordingly, wherever there occurs the word "Sâpindâ," it is to be understood as mediately or immediately related in body.

5. If Sapindas are to be reckoned by being related in body, then there would be no end. This will be spoken of hereafter. * * * *

As in this wide world every body would be a Sâpindâ, this will be very extensive. To prevent this it is said that the relation of Sâpindâ ceases with the fifth ancestor on the mother's side, and the seventh of the father's side. First is the man himself, and sixth from the father, and sixth from the son are the Sâpindâs. But in case of descendants of different tribes, it extends to three generations from the person himself.

Sumbhoeeo Summoot'han.

1. When a man having gone to a foreign country dies, his property goes to the (Dayada) heirs, Band'havahs, or the kinsmen. In their default the fellow-traders who have been sent abroad, and in their default the property goes to the king.

2. When one of several persons associated in trade dies after having gone to a foreign country, his property goes to his sons or grandsons, and the rest in the order as laid down before; in their default, the property goes to the Bândhus, viz., the Bândhus on the mother's side, that is, the maternal uncle of the mother and the rest; then gentiles, that is, those besides the persons mentioned. In their default those amongst the fellow-traders who are capable of paying the debt and bestowing the funeral cake. In their default the king takes. The object of the text is to exclude pupil, Bramachari, and Brahmins from inheritance, and to include the persons associated in trade.

NIRNAYAJSINDHU.

Chapter on Marriage.

1. The ancestors, from the fourth degree from the man himself, partake of the *lape* or offering made after an oblation with the *cusa* grass, the partakers of the funeral cake

are from the father, the person who offers the funeral cake is the seventh, these are the Sâpindâs to the seventh degree.

2. In that case how can a paternal uncle be a Sapinda ?

Because the same ancestor who partakes of the (shradh) oblation offered by the uncle, also partakes of the oblation offered by the nephew.

3. If some amongst the ancestors who partake of the funeral cake offered at a shradh performed by Devâ Dâtta, also partake of, and receive, the funeral cake offered by another person in the performance of a shradh, the relation of Sâpindâ exists between that person and Devâ Dâtta.

4. So, accordingly, the wives of such persons are Sâpindâs, as they assist in such ceremonies, and as by marriage the husband and wife have become one person.

5. Then how can a maternal uncle be a Sâpindâ ?

Because there is affinity in the *Devata* (or receiver of the funeral cake) in the maternal grandfather.

6. In that case a preceptor and a pupil can be Sâpindâs, as the one has to perform the funeral ceremonies of the other.

So can the king. But the text of Yajnyawalkya limits the Sâpindâs to the seventh degree of the paternal ancestors and fifth of the maternal ancestors. Propinquity must also exist. This shows that although relationship may exist, yet the ascending line of the Sâpindâs is limited.

VEERAMITRODAYA.

On failure of the father's Santan,* the grandmother the grandfather, the paternal uncle, his son (*Putra*) take the inheritance according to their order. On failure of the grandfather's Santan,* the great grandmother, the great grandfather, the grandfather's brother, and his son (*Sûtâ*), and similarly others up to the seventh degree being Sâpindâs of the same Gotra (or race) partake of the inheritance.

On failure of the Sâpindâs, the Sâmanodâkâs succeed. The Sâmanodâkâs are ancestors of the seventh degree, the ascending line from above the Sâpindâs reaching as far as the memory of birth and name extends. As Menu says,

* Family race, lineage ; Amera Goshâ ; Offspring, progeny, a son or daughter ; Wilson's Sanscrit Dictionary, p. 960.

the Sâpindâs end in the seventh degree of ancestors, the Sâmanodâkâs end in the fourteenth degree of the ascending line, or as some say so far as the memory of birth and name extends, or being of the same Gotra.* * *

The Sâmanodâkâ nearer in affinity would take in preference to one more remote.

On failure of Sâmanodâkâs the Bândhus succeed. There are three sorts of Bândhus: First the Bândhus of the person himself. Second, his father's Bândhus, and third, the Bândhus of his mother, as mentioned in the Smriti. "The son of his father's sister, the son of his mother's sister, the son of his maternal uncle, are a man's own cognate kindred. The son of father's paternal aunt, the son of father's maternal aunt, the son of father's maternal uncle, are the Bândhus of a man's father. The son of mother's paternal aunt, the son of mother's maternal aunt, and the son of mother's maternal uncle, are the Bândhus of a man's mother. Amongst them, owing to near affinity, the man's own Bândhus first succeed, after them (on failure of them) the father's Bândhus, and on their failure the mother's Bândhus succeed."

In Smriti of Menu, then on failure of them the *saculyas*, the preceptor, the pupil succeed. The term "Saculya" in the text includes "Sagotra" (of the same family), Sâmanodâkâs (or kinsman allied by libation of water), the maternal uncles and the rest; and all the Bândhus. In the text of Yôgeshwara (Yajnyawalkya) the term Bândhu includes the maternal uncle and the rest, otherwise if the maternal uncle and the rest be not included, then their sons would be entitled to inherit, and not they themselves, who are nearer in affinity. This would be highly objectionable.

PARASARA MADHAVA.

Bibâhâ Procârânum.

A Sâpindâ is one who is of the same *Pindâ*. The Sâpindâ is one who is within the seventh degree of the ascending line of ancestors. Of the seven persons, the person offering the funeral cake is one, three of them are the receivers of the Pindâ or funeral cake, and three of them from the great grandfather are partakers of the lape*; so mentioned in the Matsa Purâna, the partaker of the lape*

* The offering made with a *Cusa* grass of what remains in the thumb after offering the Pindâ, or funeral cake.

is from the fourth ancestor, the partakers of the Pinda* are from the father, the giver of the Pinda* is the seventh person, the Sâpindâs are the seven generations.

So in the Mârcândâ Purana, the father, grandfather, and the great grandfather, (these three) are the partakers of the Pinda*; the other three being up to the great grandfather of the grandfather are partakers of the lapa the person offering the Pinda (funeral cake) is the seventh in degree. The Sâpindâs are all the six ancestors from the father.

Then, in that case, a brother or an uncle is not a Sapinda, because neither a brother nor an uncle comes within the category above mentioned?

They are Sâpindâs, because the person to whom one offers the funeral cake partakes of the oblation offered by another. Therefore the partaking by an ancestor of the Pinda offered by an uncle or a nephew, and by the person himself, renders that person a Sâpindâ of the uncle or nephew.

Accordingly, the wife of such person is a Sâpindâ to the wife of one whose Pinda* is shared by a common ancestor, because she assists in such ceremonies.

The opinion of certain other sage † is, one who has the same body with another individual is a Sâpindâ of that individual. The son being immediately related to his father in body is Sâpindâ of the father. Accordingly, such relation is immediate between the father and grandfather, and mediate as between an individual and his grandfather, and so the mother is immediately connected with the maternal grandfather in body, so accordingly the mother is connected in body to her sister, and the father with the father's sister as descended from a common ancestor. Accordingly, the wife being connected in body to her husband by marriage is a Sâpindâ. So a brother's wife is a Sâpindâ.

PARASARA MADHAVA.

As translated in Ilias Koonwur vs. Agund Rai. 24th May 1820. 3 Sel. Rep., Cal., p. 53., Ed. 1868.

(*) Funeral cake.

(†) Name not given.

“In the *Pārāsārā Mādhava Sâpindâ* is thus defined : those are *Sâpindâs* who are connected by the tie of consanguinity, for instance, a father and son are *Sâpindâs* to each other, and the body of the father is perpetuated in the son without any intervention ; so also the son is by the medium of his father a *Sâpindâ* of his paternal grandfather and paternal greatgrandfather ; so also the son by the medium of his maternal grandfather is a *Sâpindâ* of his maternal aunt and uncle, and by the medium of his paternal grandfather he becomes a *Sâpindâ* of his paternal aunt and uncle ; husband and wife also are reciprocally *Sâpindâs*, being connected by the same offspring. The wives of several brothers are also *Sâpindâs* to each other, as their respective husbands, with whom they are connected by the same offspring, sprung from the same stock. The relation of a *Sâpindâ* exists whenever the same lineage or consanguinity is found to exist.”

HARALATA.*

By Anirâddhâ Bhâttâ.

The relation of *Sâpindâ* is laid down in the *Mutsa Purana*. The partakers of the *lape* (or offering of the funeral oblation with the *Cusa* grass) are from the fourth ancestor, the partakers of the *Pinda* (or funeral cake) are from the father, the giver of the *Pinda* is the seventh, these seven generations are the *Sâpindâs*.

The *Kûrmâpurâna* says :—The relation of the *Sâpindâ* ends with the seventh person taken in the ascending line from the person himself. The relation of *Sâmanodâkâ* continues so far as the memory of birth and name extends. The father, the grandfather, the great-grandfather, the ancestors, commencing from the fourth degree and partaking of the *lape*, are the seven generations who are *Sâpindâs*.

* This is an authority in Bengal. It has been inserted here on account of the text being from the *Purânâs*, whose authority is not denied by any of the Indian schools of Law.

TABLE OF SUCCESSION.

Son.	With him takes as co-heir— An appointed daughter. (1) Son of an appointed daughter. (2) Adopted son. (3) Unmarried daughter if partition had not taken place during the life-time of the father. (4) Grandsons whose fathers predeceased the grandfather. (5)
Grandson (6.) Widow (7.)	In case the owner had died separated from his co-heirs, otherwise the mother, the father, the brother. (8)
Daughter.	1st,—unmarried. 2nd,—married.

(1) Mit. Ch. 1, Sec. 11, v. 23. If a son be born after appointment, the appointed daughter takes an equal share.

(2) Subod'hini in note to v. 34, Sec. 11, Ch. 1.

(3) If a son be born after adoption, the share of the adopted son is one-fourth. Mit. Ch. 1, Sec. 11, v. 24, 25.

(4) Unmarried sisters must be disposed of in marriage giving them one-fourth of a brother's own share. Mit. Ch. 1, Sec. 8, v. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

(5) Mit. Ch. 1, Sec. 5, v. 2.

(6) The allotment of shares of grandsons by different fathers, is according to fathers. Mit. Ch. 1, Sec. 5, v. 1.

(7) Ch. 2, Sec. 1, v. 39.

(8) There is a doubt as to who would take the inheritance in case of a man dying unseparated from his father and brothers, whether the mother or the father or the brothers if the father were dead. No such case has as yet been tried in our Courts, nor is there any express text on the subject. See Mit. Ch. 2, Sec. 3, v. 1. In v. 39, Sec. 1, Ch. 2 of Colebrooke's translation of the Mitacshara the words "from his co-heirs" have been used, but they are not in the original.

तस्मादपुत्रस्य स्वर््यातस्य विभक्त्यासंसृष्टिनः ।

परिणीता स्त्री संयता सकलमेव गृह्णातीति स्थितम् ।

The words are "separated and not re-united," the words "from his co-heirs" do not occur. But re-union can take place only with particular persons, viz., a father a brother, or a paternal uncle. If there has been a re-union with a brother or an uncle, would the mother or the re-united brother or uncle have the preference in succession ?

- If the competition be between an enriched and an unprovided daughter. (9)
 1st,—the unprovided daughter.
 2nd,—the enriched daughter.
 Mit. Ch. 2, v. 1, 3, 4.
- Daughter's son. Son of other than appointed daughter. Mit. Ch. 2, v. 6.
- The mother (10.) The step-mother has no right to inherit. *Lalla Johee Lall vs. Deo Bane Koonwur.* S. N. W. R., p. 173, case 46, Appendix, p. 53.
- The father. (10.) In case of re-union with a half-brother, and if an uterine brother be living separate and not re-united, they both shall take and divide the heritage. (13) Mit., Ch. 2, Sec. 9, v. 7, 8. Uterine sisters also partake in the inheritance. *Ib.*, v. 12, 13.
- Uterine brother. (11.)
- Half-brother. (12.)
- Uterine brother's sons. (13)
- Half-brother's son. (14)

The Gotraja or Gentiles.

- 1st, Sagotra Sâpindâ. (15.)
 Paternal grandmother,
 „ „ father.
 Father's brother (16.)
 „ brother's son.

(9) *Quere.*—Who shall have the preference if the competition be between a provided but an unmarried daughter, and an unprovided but a married daughter?

(10) Mit. Ch. 2, Sec. 3, v. 1, 2, 3, 4, 5.

(11) Mit. Ch. 2, Sec. 4, v. 1, 5.

(12) *Ib.* v. 6.

(13) But not so in case of nephews. If the competition be between brothers of the half-blood and the nephews of the whole blood, the half-brothers take in preference to the nephews. Mit. Ch. 2, Sec. 4, v. 7.

(14) But he takes before the brother if the deceased had been living separate from his surviving brother, and joint with the nephew. *Kesubram Mohaputtur vs. Nandkissore Mohaputtur.* 3 B. L. R., A. C., p. 7; Appendix, case 55, pp. 53, 54. The nephews take *per capita* and not *per stirpes* as in case of grandsons. Mit. Ch. 2, Sec. 4, v. 7, and note thereto.

(15) See Addenda.

(16) The brothers and nephews of the whole blood would exclude brothers and nephews of the half-blood as above.

- Great grand mother.
 " " father.
 Grandfather's brother.
 " " brother's son.
 Great great grand-mother.
 " " " father.
 " grandfather's brother.
 His son.
 Grandfather's great grand mother.
 " " " " father.
 Great great grandfather's brother.
 " " " " brother's son.
 Grandfather's great great grand mother.
 " " " " father.
 " great grandfather's brother.
 " " " brother's son,
 Great grandson.
 Grandson's grandson.
 " great grandson.
 " " great grandson.
 Brother's grandson.
 " great grandson.
 " " great grandson.
 His son.
 Father's brother's grandson.
 " " great grandson.
 " " " great grandson.
 His son.
 Grandfather's brother's grandson.
 " " great grandson.
 " " " great grandson.
 His son.
 Great-grandfather's brother's grandson.
 " " great grandson.
 " " " great grandson.
 His son.
 Great-great grandfather's brother's grandson.
 " " " great grandson.
 " " " " great grandson,
 His son.
 Grandfather's great grandfather's brother's grandson.
 " " great grandson.
 " " " great grandson,
 His son.

*Asāgotrā Sāpindā.**These are classed as Bāndhus.*

Sister's son. (17)

Maternal grandfather.

" uncle. (18)

" " son. (19)

" great grandfather.

" grandfather's brother.

His son.

Maternal great great grandfather.

" " grandfather's brother.

His son.

Sāmānodākās.

The eighth ancestor.

Brother of the seventh ancestor.

His descendants to the eighth degree.

This reaches as far as the fourteenth degree in the ascending line, each line of a particular ancestor running down to a descendant in the fourteenth degree would be a *Sāmānodākā* to the deceased. *On failure of the Sāmānodākās, the Bāndhus succeed. They are—*

1. The Bāndhus of the man himself.

The sons of his father's sister.

" " mother's sister.

" " maternal uncle. (20)

2. The Bāndhus of his father.

Sons of his father's paternal aunt.

" " " maternal uncle.

His father's maternal uncle. (21)

Sons of his father's maternal uncle.

3. The Bāndhus of his mother.

The sons of his mother's paternal aunt.

" " " maternal aunt.

His mother's maternal uncle.

The sons of his mother's maternal uncle.

(17) The sister's son is placed by NUNDA PUNDITA and BALLAM BHATTĀ as next in rank to brother's son. See Mit., Ch. II, Sec. 4, v. 7, and the note thereto.

(18) See Mit. Acharadhaya, in the Addenda.

(19) He is reckoned as a Bāndhu. Mit., Ch. II, Sec. 6, v. 1.

(20) He can be classed as a Sāpindā. See above. We have not placed the maternal uncle as a Bāndhu as he has been classed as a Sāpindā.

(21) We have found no authority, but by analogy he is an heir. See *Addenda*. Translation from the Mitacshara, Chap. Sambhoceeo Sam-moot'han.

Succession of Strangers.

Preceptor.
Pupil.
Fellow-student.
Learned Brahmin.
The King. (22)

(22) See Mit., Ch. II, Sec. 7, v. 6; and Collector of Musulipatam *vs.* Cavalry Vencatah Narainapah. 8 M. I. A., p. 500; Appendix, p. 37.

ABBREVIATIONS

USED IN THE APPENDIX.

ABBREVIATION.	NAME OF WORK.
Bourke ...	Reports of cases decided. By the High Court of Calcutta. By W.M. Bourke.
B. L. R. ...	Bengal Law Reports.
A. C. ...	Do. appellate cases.
O. C. ...	Do. original cases.
P. C. ...	Do. Privy Council Cases.
B. H. C. Repts. ...	Reports of cases decided by the High Court of Bombay.
A. C. J. ...	Do. appellate cases.
O. C. J. ...	Do. original cases.
B. S. D. A. ...	Decisions of the Sudder Dewanny Adawlut of Bombay.
Borr. ...	Reports of cases decided by the Sudder Dewanny Adawlut of Bombay. By H. Borrodaile.
Fulton ...	Reports of the Supreme Court of Calcutta. By Fulton.
H. C., N. W. P. ...	Decisions of the High Court of the North-Western Provinces.
Hyde ...	Hyde's Reports of cases decided by the High Court of Calcutta.
"Indian Jurist" ...	Edited by L. A. Goodeve.
Knapp ...	Knapp's Privy Council Cases.
M. S. D. A. ...	Decisions of the Sudder Dewanny Adawlut of Madras.
M. H. C. Repts ...	Reports of cases decided by the High Court of Madras. By O'Sullivan and Mills.
M. I. A. ...	Moore's Indian Appeals.
Marshall ...	Reports of cases decided by the High Court of Calcutta. By Marshall.
Montriou, C. H. L.	Cases of Hindu Law decided by the Supreme Court of Calcutta. By W. A. Montriou.

Oudh Sel. Cases ...	Report of Select Civil cases decided by the Judicial Commissioner of Oudh.
S. D. A., Bom. ...	Decisions of the Sudder Dewanny Adawlut of Bombay.
S. D. A., Cal. ...	Decisions of the Sudder Dewanny Adawlut of Calcutta.
S. D. A., Mad. ...	Decisions of the Sudder Dewanny Adawlut of Madras.
S. D. A., N. W. P....	Decisions of the Sudder Dewanny Adawlut of the North-Western Provinces.
Sel. Rep. ...	Select Reports.
" " Cal. ...	of the Sudder Dewanny Adawlut of Calcutta.
" " S. D. A., } ...	" " Dewanny Adawlut of Bombay. }
S. N. W. R. ...	Special number of the Weekly Reporter containing Full Bench Cases of the Calcutta High Court.
Sevestre. Con. Mar.	Sevestre's Reports of the High Court of Calcutta in continuation of Marshall.
Stokes ...	Stoke's Reports of the cases decided by the High Court of Madras.
Str. N. M. C. ...	Strange's notes of cases decided by the Supreme Court of Madras.
Suth. P. C. Cases...	Privy Council Cases edited by D. Sutherland.
Suth. Rep. ...	Sutherland's Reports of the decisions of the High Court of Calcutta from January to July 1864.
W. R. ...	Sutherland's Weekly Reporter containing decisions of the High Court of Calcutta.
Wvm. ...	Revenue, Civil, and Criminal Reporter, containing cases decided by the High Court of Calcutta. Published by Wyman and Co.