

CHAPTER X.

On the participation of sons by adoption.

1. If a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here propounded.

2. In such a case, the appointed daughter and the legitimate son take equal shares : nor is the appointed daughter entitled to a deduction of a twentieth part in right of seniority. So MANU declares : "A daughter having been appointed, if a son be afterwards born, the division of the heritage must, in that case be equal since there is no right of primogeniture for the woman.*" For the appointed daughter does not herself perform the functions of an eldest son ; but through her son, presents funeral oblations : as is hinted by MANU : "He, who has no son, may appoint his daughter in this manner to raise up a son for him : saying, the child which shall be born of her, shall be mine for the purpose of performing my obsequies."†

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be afterwards born, her son should have the allotment of an eldest son : for he is considered as a son's son. MANU intimates as much, saying, "By that male child, whom a daughter, whether formally appointed or not, shall produce from an husband of an equal class, the maternal grandfather becomes grandsire of a son's son : let that son give the funeral oblation and possess the inheritance."‡ For the appointed daughter is as it were a son (*putra*) ; and her son is deemed a son's son (*pautra*) ; and her father to whom he thus appertains, becomes grandsire of a son's son. Now there has not been any mention of a peculiar allotment in right of primogeniture for the son's son.

4. As for the text of VASIST'HA, which declares the son of an appointed daughter to be an adopted son : ("This damsel, who has no brother, I will give unto thee, decked with ornaments ; the son

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4. *One actually is such ; and the other is so by his means.*] Since both are givers of the funeral oblation, the terms 'figuratively a son' relate to both. The author

* MANU, 9. 184.

† MANU, 9. 127.

‡ MANU, 9. 136.

who may be born of her, shall be my son.*") whence it appears, that both the appointed daughter and her son are [denominated] sons : this designation of him as a son must, (since it contradicts MANU ; and since the oblation of a funeral cake is the only quality of a son, which he possesses ;) be figurative ; for through him, the appointed daughter, offers the funeral oblation ; and thus one actually is such, and the other is so by his means.

5. The distribution beforementioned must be understood in the case where the legitimate son and the appointed daughter are of the same tribe : but, if they be of dissimilar classes, a distribution between them must be made as between legitimate sons appertaining to different classes ; for the true son and the appointed daughter are equal.

6. But, if a daughter, being actually appointed, become a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case, a right to her father's wealth : since the appointment was made for the sake of a son, who may perform obsequies ; and, on failure of that, she is similar to any other daughter.

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declares the mode of it. One namely the son of the appointed daughter, actually offers the oblation ; the other, or the appointed daughter, does so, through him ; that is, through the son of the appointed daughter. CHUDAMANI.

One.] The son of the appointed daughter. *The other.*] The appointed daughter considered as a son. *By his means.*] By means of her son. SRI-ORISHNA.

One.] The son of the appointed daughter. *The other.*] The appointed daughter considered as a son. If the reading be (*feminine instead of masculine*) *anyasyah* for *anyasya*, the sense is, 'another, namely the appointed daughter.' ACHYUTA.

One actually.] The true legitimate son is of course, in right of his birth, a son. *The other.*] The son of the appointed daughter. *By these means.*] By presenting a funeral oblation like a son. MAHESWARA.

6. *She is similar to any other daughter.*] It is thus intimated, that, as in the case of a barren daughter, who was not appointed, the next heirs take the inheritance : so they do, in the instance of such a daughter, who had been appointed. CHUDAMANI and SRIORISHNA.

7. In a partition among sons of the wife and the rest with a true legitimate son, such of them, as are of the same class with the [adoptive] father and superior by tribe to the true son, whether they be sons of an appointed daughter, or issue of the wife, or offspring of an unmarried damsel, or secretly produced, or abandoned [by the natural parents,] or received with a bride, or born of a twice married woman, or given, or self given, or made, or bought; shall be entitled to the third part of the share of a true son. So DEVALA, after having described the twelve sons, expressly declares, "These twelve sons have been propounded for the purpose of offspring: being sons begotten by a man himself, or procreated by another man, or received [for adoption,] or voluntarily given. Among these, the first six are heirs of kinsmen, and the other six inherit only from the father: the rank of sons is distinguished in order as enumerated. 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

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7. *Superior by tribe to the true son.*] If the true son be issue of a woman of the military or of the commercial class; then, the son of the wife, or other subsidiary son, being born of a *Brahmani*, is superior by tribe. CHUDAMANI.

Son of an appointed daughter.] Since the appointed daughter herself is equal to the true legitimate son, she is not included in this enumeration. CHUDAMANI.

Begotten by himself.] "Issue begotten by a man himself" comprises 1st, the *aurasa*, or true legitimate son; 2nd, a *paunarbhava*, or son by a twice-married woman; 3rd, a *parasava*, or son of a priest by a woman of the servile class; 4th, the *putrica*, or appointed daughter; these are all begotten by the man himself. "Issue procreated by another man" intends the *Kshetraja*, or son of the wife and so forth. "Sons received for adoption" are 1st *datta*, a son given; 2d, *erita*, one bought; 3d, *sahodha*, the son of a pregnant bride; 4th, *amina*, a son born of an unmarried damsel; 5th, *oritrina*, a son made. "Voluntarily given" signifies presented unsought; comprehending 1st, the *apavidha*, or son rejected [by his own parents]; 2nd, *svayamupagata*, one who comes of his own accord; and 3dly *gudhotpanna*, a son secretly produced. SRIORISHNA and AOBYUTA.

Among these, the first six are heirs.] The first six, from the true legitimate son to the son rejected by his natural parents, are heirs of kinsmen; that is, of uncles and the rest. The others from the son of a pregnant bride, to the son bought, are heirs of the [adoptive] father alone. MAHESWARA.

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.

8. The true legitimate son and the rest, to the number of six, are not only 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.)

9. They take the whole estate of a father, who has no legitimate issue by himself begotten ; but, if there be a true son, such of them, as are of the same tribe with the father, take a third part.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

11. But those [adopted sons,] who are inferior by class to the father, yet superior to his legitimate son, shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the want of such qualities.* Thus MANU says : "Let the legitimate sons, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife."†

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Such among them as are of equal class.] The *Kshetraja* or issue of the wife, being son of a *Brahmana* by a *Brahmani*, is superior by tribe compared with the legitimate issue of a *Vaisya* wife, and belongs to the same class with the [adoptive] father. So in other instances. SRIKRISHNA.

10. *The same order in distribution &c.]* If there be an appointed daughter, † the rest share a third part only. CHUDAMANI.

The same order of distribution, that is, the allotment of a third part, which has been directed for them at a division with the legitimate son, takes effect at a partition with an appointed daughter. For this very reason, the appointed daughter is exhibited first in the enumeration of twelve sorts of sons. SRIKRISHNA.

11. *According to their good qualities &c.]* According as they have good qualities, or are deficient in them. In fact, it is fit, that the adopted son, inferior by class to the father, but belonging to the same tribe with the legitimate son, should have a sixth part ; or, if he belong to a superior tribe, a fifth : no allotment being specified for one inferior to the father but equal to the legitimate son, there would be deficiency in the provisions of the law. SRIKRISHNA.

* SRIKRISHNA and ACHYUTA notice a variation in the reading. (*Gunavada-gunataya*, and *Gunavada-gunavashaya*.) which does not, however, make any material difference in the sense.

† MANU, 9. 161.

‡ This commentator appears to have read *putricayam api* instead of *putricayam*.

12. Since all adopted sons are in DEVALA's text, (§ 7.) equal to the wife's son, the term *Kshetraja* (son of the wife) is, in MANU's text, indefinite [and comprehends other descriptions of sons.]

13. But such as are inferior by class to the father, and to their brother, his legitimate son, are entitled only to food and raiment. So MANU declares: "The legitimate son is the sole heir of his father's estate: but, for the sake of pity, he should give a maintenance to the rest.*" Thus CATYAYANA says, "If a legitimate son be born, the rest are pronounced sharers of a third part, provided they belong to the same tribe [with the father:] but, if they be of a different class, they are entitled to food and raiment only."

14. The term "the rest" in the text of MANU, as well as the phrase "if they be of a different class" in that of CATYAYANA, signify one of inferior tribe: conformably with the text of DEVALA. (§ 7.)

15. MANU states the distribution between a true son, and the son of the wife produced without due authority. "If there be two sons, a legitimate one, and the son of a wife, claiming the estate of the same person, each shall take the property which belonged to his father; and not the other."†

16. Let each receive the wealth of him, from whose seed he sprung: and let not the other take it, who sprung from the seed of another person. Accordingly NARADA says, "If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's property; and not the other."‡

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12. *Since all are equal.*] For equal allotments are propounded for them. SRIORISHNA.

13. *Pity.*] Commiseration: for the sake of that. Therefore his own choice, not their right, is the motive of giving them a maintenance. Here maintenance signifies a subsistence. SRIORISHNA.

Sharers of a third part.] The *Mitakshara*, with certain other authorities, reads 'a fourth part.' See *Mitakshara* on inheritance C. 1. Sect. 11. § 25.

* MANU, 9. 163.

† MANU, 9. 162.

‡ MANU, 9. 191, and cited from his institutes by numerous compilers; but referred by JIMUTA-YAHANA and RAGHUNANDANA to NARADA. It is not, however, found in the institutes of this author.

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take : and not the other. It would be needless to enlarge.

CHAPTER XI.

On succession to the estate of one who leaves no male issue.

SECTION I.

On the widow's right of succession.

1. In regard [to succession*] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passages of law.

2. Thus VRIHASPATI says, "In scripture and in the code of law, as well as in popular practice, 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 deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present.† Dying before her husband, a virtuous wife partakes of his consecrated fire : or, if her husband die [before her, she shares] his wealth : this is a primeval law. Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids,

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17. *The wealth appertaining to the woman.*] The wealth of the woman, in NARADA's text, signifies property which has come into her hands [by inheritance]. For, if it were her own peculiar property, they would have equal shares of it. MAHESWARA.

2. *Partaker of his consecrated fire.*] After her decease her body is burnt with fire taken from his consecrated hearth. MAHESWARA.

Let her duly offer.] The causative verb is used in the original, with the sense of the simple verb, according to the remark of CHUDAMANI and SRICRISHNA.

* SRICRISHNA.

† Vide infra. § 54.