

affirmed, that black kidney beans are unemployed in sacrifices ; although ground particles of green beans, intermixed with black beans, be employed ; for, in such case, mixed black beans appear to be used at the sacrifice.

17. Thus has partition of effects concealed by coparceners from each other, been discussed.

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## CHAPTER XIV.

### *On the ascertainment of a contested partition.*

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1. The determination of a doubt, regarding the fact of a partition having been made, is next explained. On that subject NARADA says, "If a question arise among coheirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transaction of affairs."\*

2. The mention of kinsmen is intended to show, that, if such be forthcoming, other persons should not be made witnesses. Accordingly [since a recourse to other witnesses is forbidden when kinsmen are forthcoming,†] YAJNYAWALOYA says, "when partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof ; or by separate possession of house or field."‡

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### ANNOTATIONS.

*As in the instance of green and of black kidney beans.]* The author here adverts to the reasoning contained in the *Mimansa*, 6. 3. 6. Vide *Mitashara*, C. I. Sect. 9. § 11.

1. *By the record of the distribution.]* ACHYUTA and SRIORISHNA notice a variation in the reading of the text, *bhoga-lekhyena*, in place of *bhaga-lekhyena*. Their exposition of that reading is 'by occupancy or by a writing.' In the various quotations of this passage in numerous compilations, no other hint of such a reading has been found : except in BALAM-BHATTA'S commentary on the *Mitashara*.

JIKUTA-VAHANA makes subsequent mention (§ 5) of another unauthorized variation of the text.

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\* NARADA, 13. 35.

† SRIORISHNA.

‡ YAJNYAWALOYA, 2. 150.

3. 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."

4. Hence also SANKHA 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 [as the maternal uncles and the rest\*] may give evidence: but not a stranger [while a person of the family can bear testimony.†] But, if these also be uninformed, any other person may be a witness.

5. Accordingly, kinsmen are stated by NARADA (§ 1.) as the chief evidences: and a different reading, *jnyatribhik*, 'persons acquainted with the matter,' [instead of *jnyatribhik*, kinsmen,] is unfounded.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony: being so declared [by an express passage of law: "Testimony is better than presumption; and a writing is better than oral evidence."‡]

7. In the next place, the proof is by the circumstance of separate transaction of affairs (§ 1.) as it is stated by NARADA, "Gift and acceptance of gift, cattle, grain, house, land and attendants, must be considered as distinct among separated brethren, as also diet, religious duties, income and expenditure. Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those, by whom such matters are publicly transacted with their coheirs, may be known to be separate even without written evidence."§

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#### ANNOTATIONS.

7. *With their coheirs.*] This is according to the reading of the text, as it is expounded in the *Smṛiti-śākhā*. But copies of JIMUTAVAHANA exhibit *sva-riothatah* 'with their own wealth,' instead of *sva-riotheshu* 'with their coheirs,' or *at'ha-riot'hinam*, the correspondent reading which occurs in the *Ratnaśara*. As neither JIMUTAVAHANA, nor his commentators, explain the passage, it has been thought expedient to follow the reading which preserves the best sense.

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\* *Viramitrodaya*.

† SRIOBISHNA.

‡ ACHYUTA and SRIOBISHNA.

§ NARADA, 18. 38. 40.

8. So VRIHASPATI : " A violent crime, immoveable property, a deposit, and a previous partition among coheirs, 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."

9. One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth†] and abode are separate ; or, when a loan or other affair is 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 among divided brethren, a presumption of partition is deduced from it by the intelligent.

10. It is not to be concluded from the use of the plural number in the phrase " by whom such matters are transacted" (§ 7.), that concurrence of all those circumstances is required. For these texts are founded on reason ; and the reason is equally applicable in every several instance.

11. By saying " if there be neither writing nor witnesses," (§ 8.) it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence.

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#### ANNOTATIONS.

8. *Exertion of force, a blow &c.*] The commentary of SRICRISHNA confirms and explains the reading, as exhibited in JIMUTAVAHANA'S quotation. But in the *Smṛiti-chandriā*, the text is read and interpreted *aulanubandha* 'a family feud, instead of *balanubandha* 'an exertion of force,' and *vyaghata* is expounded 'rivalship' instead of mark of a blow.

11. *By saying "if there be neither writing nor witnesses."*] This remark confirms the reading of the passage, as exhibited in the text. But, in the *Smṛiti-chandriā*, it is read "if there be no witnesses;" *na syur yatra cha saoshināh* in the place of *na syatam patra-saoshināu*.

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\* SRICRISHNA.