would be no legal basis for the position that a daughter is not excluded by her own son at the moment of his birth. Though there is a passage in *Vira Mitrodaya* similar to the one in *Smriti Chandrika*, we find that, as observed by Mr. *Mayne* in his treatise on the Hindu Law, *Colebrooke*, *MacNaughten*, the High [270] Court in *Bengal*, and the Privy Council have held that, under the *Mitakshara* law as administered in the North, barren daughters are not excluded by daughters having male issue.

For these reasons we think this appeal fails, and it must be dismissed with costs.

NOTES.

[*See* the notes to (1878) 3 Cal. 587 P. C. in the Law Reports Reprints. That consanguinity alone is the basis of the succession of females other than the widow was applied to the case of mother in (1907) 3 Mad 100.]

[3 Mad. 270]

APPELLATE CIVIL.

The 13th July, 1880.

PRESENT:

MR. JUSTICE KINDERSLEY AND MR. JUSTICE FORBES.

Rama Varar.....(Second Defendant), Appellant

versus

Krishnen Nambudri.....(Plaintiff), Respondent.*

The Samudayi of a temple is not competent to bring a suit in its behalf. The proper parties to sue are the Uralars (trustees).

THIS suit was brought to recover certain land with rent already due and to become due. It was alleged that the plaintiff managed the affairs of the temple under an agreement. The second defendant, the appellant in the Lower Appellate Court and in the High Court, denied the plaintiff's right to sue.

A. Ramachandrayyar for the Appellant.

Mr. *Lascelles* for the Respondent.

The Court delivered the following

Judgment:—This was a suit brought on behalf of a temple by the Samudayi to redeem a mortgage. The objection has been taken by the second defendant from the commencement of the suit, and again in second appeal, that the suit should have been brought in the name of the Uralars or trustees of the temple, and not in the name of their agent the Samudayi. We think the objection well founded. The defect is not cured if the plaintiff holds an authority from persons who are not parties.

For these reasons we are obliged to reverse the decrees of the Lower Courts and to dismiss the suit. The plaintiff must bear all the defendant's costs.

Suit dismissed.

* Second Appeal No. 92 of 1880 against the decree of V. P. D'Rozario, Subordinate Judge of North Malabar, dated 20th September 1879, confirming the decree of the Court of Domingo D'Cruz, District Munsif of Badagara, dated 30th March 1878.

NOTE.—*See.* I.L.R., 2 Mad., 168.

NOTES.

[*See* also (1881) 4 Mad. 141, where INNES,J., observed,"It cannot be said that a religious institution in the hands of trustees (the Uralars) is sufficiently represented by the agent or manager, for, as a matter of procedure, the devaswam could not be sufficiently represented by him unless he of himself constituted the corporation, which he does not do, or was a person specially authorized by law to conduct suits on behalf of the *devaswam* or its trustees, and he is not so authorized."]

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[271] CROWN SIDE—FULL BENCH.

The 14th February, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE INNES, MR. JUSTICE KERNAN, MR. JUSTICE KINDERSLEY, AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen

versus

Gopal Doss and another.

Evidence Act. Section 132—Criminatory answer of witness—Privilege conditional on objection to answer being taken

In a Small Cause suit under Chapter XXXIX of the Code of Civil Procedure on a promissory note, which was alleged to have been executed jointly by G and his son V, V filed an affidavit in order to obtain leave to defend the suit, and, having obtained leave to defend, gave evidence at the trial on his own behalf.

On a subsequent trial of V for forgery of his father's signature to the same promissory note, the affidavit and deposition of V in the Small Cause suit were admitted as evidence against V.

Held by TURNER, C.J., INNES and KINDERSLEY,JJ., that both the affidavit and deposition were properly admitted.

By KERNAN and MUTTUSAMI AYYAR, JJ., that the affidavit was properly admitted but not the deposition.

Per TURNER, C.J., INNES and KINDERSLEY, JJ.—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, may be used against him on his trial on a criminal charge.

If a witness does not desire to have his answers used against him on a subsequent criminal charge, he must object to answer, although he may know beforehand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled.

IN June 1880 one *Salem Chand* brought a suit in the *Madras* Small Cause Court upon a promissory note for 1,000 rupees, alleged to have been executed by *Gopal Doss* and his son *Vallaba Doss*.

The suit was instituted under Chapter XXXIX of the *Civil Procedure Code*. *Gopal Doss* and his son both made affidavits in Court, and leave was given to defend the suit under Section 533 by Mr. *Busteed*, the Senior Judge.