tion of it merely in excess of their theretofore paid subscriptions by punctual payment of future subscriptions—no interest being charged except on such subscriptions as should not be paid as they fell due. The hope of gain by drawing an early prize is no doubt the motive which induces persons to become subscribers to these kuris—and such gain is sufficient to bring the associations within the scope of the Companies Act, *Cf. Shaw* v. *Benson*(1) and *In re Padstow Total Loss and Collision Assurance Association*(2). *Kraal* v. *Whymper*(3) is distinguishable, as pointed out in that case itself, from a case in which the object of the business is "to enable some "of the members to acquire gain by their dealings with the rest," which is a not inapt description of the object of the association now in question.

The bond A on which the suit was brought is executed not only to the first plaintiff as stakeholder, but to him and the subscribers to the kuri.

It is, therefore, a contract to pay money according to the rules of an association illegal for want of registration under section 4 of the Companies Act (VI of 1882).

I concur in dismissing the suit without any order as to costs.

ORIGINAL CIVIL.

Before Mr. Justice Subramania Ayyar.

THAYAMMAL (PLAINTIFF),

1895. October 11.

v.

ANNAMALAI MUDALI AND ANOTHER (DEFENDANTS).*

Hindu law—Inheritance—Stridhanam—Sister-in-law.

A childless Hindu widow, who had been predeceased by her parents, died, leaving stridhanam property. Her brother's widow claimed to be entitled to inherit that property and sued to enforce her claim:

Held, that, whether the marriages of the deceased and her mother respectively had taken place in a superior or an inferior form, the plaintiff was not entitled to inherit the stridhanam property in question.

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(1) 11 Q.B.D., 563, 570.
(2) 20 Ch. D., 137, 145.
(3) I.L.R., 17 Calc., 786, 808.
* Civil Suit No. 108 of 1895.

THAYAMMAL v. ANNAMALAI MUDALI.

SUIT for possession of certain property the stridhanam of one Seshammal, deceased, to which the plaintiff claimed to be entitled under the law of inheritance. Seshammal had died, leaving no children or parents and the plaintiff was her brother's widow. It was pleaded, *inter alia*, that the plaintiff was not entitled to inherit under the Hindu law. The first issue related to this plea and that alone was tried.

Mr. *R. F. Grant* for plaintiff.

Balaji Rau and *Desikachariar* for defendant No. 1.

Sundara Ayyar for defendant No. 2.

JUDGMENT.—On the application of the defendants the first issue, which is one of law, was argued under section 146 of the Code of Civil Procedure. It raises the question whether the plaintiff is, as alleged in the plaint, heir to the stridhanam of the late Seshammal, a married woman.

According to the rules of law applicable to the devolution of the stridhanam of a married woman, the property passes in the first place to the lineal descendants, if she left any, in an order to which it is unnecessary here to refer. The course of descent in default of descendants varies according to the form in which the deceased was married. If the marriage was in one of the four approved or superior forms, the husband, if he survives, takes the inheritance and in default those who would be his heirs. But if the marriage was in one of the four unapproved or inferior forms, the deceased's mother succeeds, and if there is no mother, the father. Failing the parents the heirs of the father and in default those of the mother inherit (Mitakshara, chapter II, section XI; Stokes' Hindu Law Book, page 461).

Now the allegation in the plaint relevant to the present question are that Seshammal died, leaving no lineal descendants nor husband nor mother nor father, and that the plaintiff is the widow of Seshammal's brother, who predeceased his sister. As to the form, however, in which Seshammal was married the plaint is silent. The law presumes under the circumstances that the marriage was in one of the approved forms (Mayne's Hindu Law, 5th edition, paragraph 80) and in this view of the matter the plaintiff has to show that she is heir to Seshammal's husband. The learned counsel for the plaintiff scarcely ventured to assert that a person in the position of the plaintiff can be heir to her sister-in-law's husband. No authority was cited in favour of that proposition

and none, I believe, can be found to support it. A man's wife's brother's widow belongs to none of the three well-known classes of relations who are heirs to him. She is neither a sapinda nor a samanodaka nor a bandhu of that man, and so far as the law of inheritance goes there seems to be no difference between her and a complete stranger. It is thus perfectly clear that, on the hypothesis that Seshammal's marriage was in one of the superior forms, the plaintiff's claim must fail.

The case, however, has to be considered with reference to the other hypothesis also, viz., the marriage was in an inferior form. It is true, as observed before, that the presumption is against that hypothesis. But that is a rebuttable presumption, and, as no evidence has been taken, I think the plaintiff is entitled to ask for a determination of the question on the supposition that she will be able to adduce evidence to rebut that presumption. In this view the question is, is the plaintiff heir to Seshammal's mother or father? It is convenient to take first the latter part of the question. On behalf of the plaintiff certain passages in *Kutti Ammal* v. *Radakristna Aiyan*(1) and *Lakshmanammal* v. *Tiruvengada*(2) were relied upon. Assuming those cases to be among the authorities for the proposition that bandhus need not necessarily be male relations, I fail to see how they afford any support to the claim of the plaintiff, since to enable her to come in as a bandhu of Seshammal's father, his gotra and that of the plaintiff must be different, whereas the contrary is the case here. By her marriage she passed into his gotra; and if she is entitled at all, it can only be as one of his sagotra sapindas. But, unlike under the Mayukha, a female sagotra sapinda of Seshammal's father in the position of the plaintiff is not an heir to him in this Presidency. (*Balamma* v. *Pullayya*(3); see as to daughter-in-law, specially, Mayne's Hindu Law, 5th edition, paragraph 488, and Dr. Jolly's Lectures on Hindu law at page 199). The next question is, is the plaintiff heir to Seshammal's mother? The answer to this also must be in the negative. For if Seshammal's mother's marriage was in an approved form, on the hypothesis that she died an issueless widow, (on which hypothesis alone the plaintiff can claim), the mother's heir would be her husband's, *i.e.*, Seshammal's father's heir. And

(1) 8 M.H.C.R., 88. (2) I.L.R., 5 Mad., 241.
(3) I.L.R., 18 Mad., 168.

THAYAMMAL v. ANNAMALAI MUDALI.

I have already shown that the plaintiff is not his heir. But even supposing Seshammal's mother was married in an inferior form—*Bandam Settah* v. *Bandam Maha Lakshmy*(1), wherein it was broadly laid down that under the Hindu law a daughter-in-law is not an heir to her mother-in-law, is a direct authority against the plaintiff.

I must, therefore, hold that in no point of view the plaintiff's claim, that she is entitled to Seshammal's stridhanam, is sustainable. And finding the first issue against her I dismiss the suit with costs.

Branson & Branson attorneys for plaintiff.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Subramania Ayyar.

1895. August 20, 29.

KANAKAYYA (PLAINTIFF NO. 2), APPELLANT,

v.

NARASIMHULU AND OTHERS (DEFFENDANTS), RESPONDENTS.*

Party-wall—Erection on the wall by one tenant in common—Injunction at suit of other co-tenant.

One of two tenants in common of a party-wall raised the height of the wall with a view to building a superstructure on his own tenement. The other tenant in common, who had not consented to the alteration in the wall, but had suffered no inconvenience therefrom, now sued to enforce the removal of the newly-erected portion:

Held, that the plaintiff was entitled to the relief sought.

SECOND APPEAL against the decree of N. Saminadha Ayyar, Subordinate Judge of Vizagapatam, in appeal suit No. 40 of 1893, affirming the decree of A. L. Narasimham, District Munsif of Vizianagaram, in original suit No. 86 of 1892.

The plaintiffs and defendants were tenants in common of a party-wall. The defendants, without the consent of the plaintiffs, intending to build a superstructure on their tenement, raised the

(1) 4 M.H.C.R., 180.

* Second Appeal No. 865 of 1894.