Stress was laid upon the form of the declaration granted in such cases according to the decisions in *Shurut Chunder Sein* v. *Muthooranath Pudatick*(1), *Brojo Kishoree Dassee* v. *Sreenath Bose*(2) and other similar cases. That form of declaration seems to have been adopted to prevent any supposition that the declaration in any way affected the right of the alienee during the lifetime of the alienor to what was transferred in circumstances not rendering the alienation valid beyond the lifetime of the alienor. Even if it were otherwise, those cases cannot, in the face of the later authorities above referred to, be understood as being sufficient to support the view contended for. Illustration E to section 42 of the Specific Relief Act, to which our attention was drawn, must of course be read with section 43, and when so read points to the same conclusion.

We must therefore hold that the right to sue in the case was a personal right and ceased with the death of the plaintiff. The appeal abates and the respondents are entitled to their costs out of the estate of the deceased. The Civil Miscellaneous Petition No. 734 of 1903 asking to have the name of the petitioner in Civil Miscellaneous Petition No. 996 of 1902 removed and to declare that the appeal has abated, is allowed.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

VEDANAYAGA MUDALIAR (PLAINTIFF), APPELLANT,

v.

VEDAMMAL (DEFENDANT), RESPONDENT.*

1904. March 16, 30, 31. April 6, 12.

Hindu Law—Succession to property of deceased—Death caused by murder—Participation in crime by next heir—Effect on right of succession—Specific Relief Act I of 1877, s. 42—Failure to claim consequent relief—Property in custodia legis*—Plaintiff being the custodian.*

Plaintiff sought for a declaration of his right to property without asking that the property should be delivered to him. The property had belonged to S deceased. Prior to the death of S, who was a minor, proceedings had been

(1) 7 W.R., (C.R.), 303. (2) 9 W.R., (C.R.), 463.

* Appeal No. 88 of 1902, presented against the decree of B. Cammaran Nair, Additional Subordinate Judge of Tinnevelly, in Original Suit No. 10 of 1901.

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taken for the appointment of a guardian for him under the Guardian and Wards Act. Pending those proceedings the District Court appointed plaintiff Receiver and placed him in possession of the property, removing the minor's mother, the present defendant, from the charge thereof. The High Court reversed that order and directed that possession of the property should be handed back to the defendant. This order had not been carried out to any extent at the date of suit. On the objection being raised that the suit was not maintainable by reason of section 42 of the Specific Relief Act:

Held, that the suit was maintainable. The possession of the property was, at the time, neither with the defendant nor with the plaintiff, it being in *custodia legis* and in the hands of an officer of the Court and it being a mere accident that that officer was the plaintiff. Inasmuch as the defendant was not in possession, plaintiff could not, as against her, have consequential relief, and nothing more was required to be done to secure to the plaintiff all his rights than to obtain an order of the Court enabling him to retain possession in his own right.

Defendant, the mother of S had been charged, with another accused, with having murdered S. Defendant was acquitted, but the other accused was convicted. Plaintiff, as the next in succession to S (after the defendant) now sued for a declaration of his right to the property of S on the ground that the defendant was not entitled to the property, inasmuch as she had, as plaintiff alleged, been a party to the murder. The Subordinate Judge dismissed the suit without trying the question whether the defendant had been a party to the murder :

Held, that the question should have been tried. The question whether a Hindu who has been party to a murder is prevented from succeeding to the estate of the person murdered is not answered by the Hindu law. But the principle that no one shall be allowed to benefit by his own wrongful act is of universal application. If the defendant was a party to the murder her wrongful act, while not preventing the vesting in her of the inheritance, disentitled her to any beneficial interest in it. Such beneficial interest would vest in those who would be entitled to it were the guilty heir out of the way.

The text of Yagnavalkya, which is the foundation of the Mitakshara law of inheritance, enunciates but a general rule, the effect of which is liable to be nullified more or less by facts other than the two postulated therein, namely, the demise of a male owner of property without co-parceners and the survival of the relation specified in the text. What such facts are has to be ascertained either with reference to the rules embodied in other Hindu texts or with reference to principles which it is the duty of the Court to follow as a tribunal bound to administer the law of justice, equity and good conscience in cases not provided for specifically.

SUIT for a declaration. The facts material to the points of law decided are set out in the judgment. The Subordinate Judge dismissed the suit. Plaintiff preferred this appeal.

Sir *V. Bhashyam Ayyangar*, *M. R. Ramakrishna Ayyar*, *P. R. Sundara Ayyar* for appellant.

Mr. *Joseph Satya Nadar*, *V. Krishnaswami Ayyar*, and *T. V. Vaidyanatha Ayyar* for respondent.

JUDGMENT.—The plaintiff, as the paternal aunt's son and *bandhu* of the deceased Sankaramoorti Mudaliyar, sues for a declaration of his right to the property left by the deceased, on the ground that the defendant, the deceased's mother, is not entitled to the property, she having been a party to his murder, but that the plaintiff, as the next in succession, is the person that has the right thereto. The defendant and a Muhammadan, by name Shaik Abdul Kadir Ravuthan, with whom she is alleged to have been criminally intimate prior to the death of her son, were tried for the murder in the Sessions Court of Tinnevelly. She was, however, acquitted while her alleged paramour was convicted of the offence.

The Subordinate Judge, without trying the question whether the defendant was concerned in the murder, dismissed the suit.

The first question for consideration is whether the plaintiff can ask for a mere declaration; and if so, whether, as urged for the defendant, the Court should, in the circumstances to be referred to, refuse the relief prayed for. Now as to the first point. Prior to the death of Sankaramoorti, he having been a minor, proceedings regarding the appointment of a guardian for him had been taken under the Guardian and Wards Act. Pending those proceedings the District Court of Tinnevelly appointed the plaintiff as Receiver and put him in actual possession of the properties of the minor, removing the defendant from the charge thereof. This Court held that the District Court had no power to appoint a Receiver in the course of the guardianship proceedings, and directed that possession of the property should be handed back to the defendant. This order for re-delivery to the defendant was no doubt passed subsequent to the death of her son, but it had not been carried out to any extent at the date of the suit. Consequently the possession of the property was, at the time, neither with the defendant, nor with the plaintiff, the property having been in *custodia legis* and in the hands of an officer of Court, it being of course a mere accident that that officer was the plaintiff himself. The defendant not having been in possession the plaintiff could not, as against her, have claimed as consequential relief an order for delivery, and if, as alleged, he is the person entitled, nothing more was required to be done to secure to the plaintiff all his rights than the revocation of the order of this Court referred to above directing delivery of the property to the defendant; and that would have enabled

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the plaintiff to retain possession in his own right. In these circumstances, it must be held that the proviso to section 42 of the Specific Relief Act is not applicable to the case, and that the suit is not open to objection on the ground that nothing more than a mere declaration of the plaintiff's right is sought for.

As to the next point it was contended for the defendant that the plaintiff had been guilty of contempt in not obeying the order of this Court directing delivery of the property to the defendant, that such contempt remained unpurged at the date of the suit and consequently that the relief sought for should, in the proper exercise of the discretion vested in the Court in cases like the present, be refused to him.

[Their Lordships dealt with the evidence on this point and held that plaintiff was not in contempt.]

The real point for our decision is, assuming the defendant was a party to the murder, whether it in any way affected her succeeding to his estate. On behalf of the plaintiff one argument was, that the commission of such a sin by a Hindu rendered the person committing it a "*patita*" or degraded person and that the degradation involved, among other consequences, a loss of the right of inheritance. Acts or omissions which entailed degradation under the Hindu system of life were indeed many. They included not only heinous sins and crimes but numerous other things which are looked upon as innocent or are tolerated in these times. It may well admit of doubt whether the injunctions connected with degradation were ever enforced otherwise than by expulsion from caste now relieved against by legislation. However this may be it is quite certain that even so far back as the days of the Dayabhaga commentator Srikrishna Tarkalankara, loss of proprietary rights as an incident to degradation had begun to disappear. (See Tagore 'Law Lectures' for 1884–85, page 426.) Since the establishment of British Rule in this country, no one seems to have ventured to suggest in judicial proceedings that the sin attaching to the commission of even such serious crimes as robbery, murder, etc., entailed by itself forfeiture of civil rights as a matter of Hindu Law, for though innumerable persons have from time to time been convicted by the Courts of such offences, the reports contain no case recognizing any such doctrine. Plaintiff's case, therefore, derives no support from the rules dealing with the matter of degradation which, even assuming that they

were at one time more than mere moral *injunctions*, cannot now be treated as otherwise than obsolete.

It will next be convenient to dispose of the American cases referred to in the argument with reference to the effect of murder on the right of the murderer to take as heir or legatee of the murdered person. In *Riggs* v. *Palmer*(1) decided by the New York Court of appeals in 1889, the facts, so far as they are material for the present purpose, were these. One Francis B. Palmer possessed of personal and real property had made his will giving certain legacies to his two daughters and the remainder of his estate to his grandson Elmer E. Palmer with a gift over to the daughters in case Elmer *should survive him and die unmarried* and without issue. Elmer, who knew of the provisions made in his own favour in the will, murdered the testator by poisoning him in order to prevent the testator from revoking those provisions (which he had manifested some intention to do) and in order that he might obtain the immediate possession and enjoyment of the property. A majority of the Court held that the devise and bequest to Elmer should be treated as *revoked* by reason of the crime of the devisee (notwithstanding that the statute of wills in force in the state, made no express mention of the commission of such a crime as a fact operating to revoke a will), that the daughters were the true owners of the real and personal estate left by the testator, and restrained the administrator and Elmer from using any of the personality or real estate for Elmer's benefit. The majority in effect held it is competent to a Court to import into a statute, on grounds of public policy, what the plain and unambiguous words of the enactment do not in any way cover. The next case was that of *Schellenburger* v. *Ransome*(2) which came before the Supreme Court of Nebraska first in 1891 and then on review three years later. There a female child of tender years was entitled to a certain estate in fee simple, subject to her father's life interest. The father, who, had the child died a natural death at the time she was murdered, would have been her heir, killed her in order that the fee simple might then *and there* vest *in* him as such heir. The Court in 1891 held on the analogy of *Riggs* v. *Palmer*(1) that the transferees from the murderer acquired no interest in the estate which had been owned by the deceased child,

(1) 115 N.Y., 506; 12 Am. St. R., 819. (2) 31 Neb., 61; 28 Am. St. R., 500.

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as the transferor himself had nothing to convey, since no one could take by inheritance the estate of a person whom he murders for the purpose of removing the life standing between him and that estate. But on the review the Court went to the opposite extreme by holding that the transferees were entitled to the estate of the murdered child notwithstanding it was found that they had taken with the knowledge that their transferor was the murderer. The last case was *In re Carpenters' Estate*(1) that came before the Supreme Court of Pennsylvania in 1895 and in which a majority of the Court held that a son who had murdered his father for the purpose of securing the latter's estate, nevertheless took the estate as heir under the statute of descents and distributions.

None of these rulings has, as might be expected, given entire satisfaction in that country. (See Harward 'Law Review,' vol. IV, p. 394, and vol. VIII, p. 170.) Notwithstanding that the Judges who took part in the second decision in *Schellenburger* v. *Ransome*(2 as well as those who formed the majority in *In re Carpenters' Estate*(1) felt, as they could not but do, that the conclusion reached by them was not what to be desired, they seem to have considered themselves bound to arrive at it lest otherwise they would be importing into the statutes they had to deal with, viz., the statutes relating to descent and distribution of property in force in the states respectively, exceptions which it was beyond the legitimate bounds of judicial interpretation to introduce. Whether, without infringing established canons of construction of statutes, the Nebraska and the Pennsylvania Courts could not have avoided the result admitted by them to be undesirable, and whether even a more satisfactory conclusion than that arrived at by the majority of the Court in *Riggs* v. *Palmer*(3) from the point of view of those who object to the latitude claimed by that majority in the matter of interpreting written laws, by following the course suggested in the periodical already cited, *i.e.*, by fastening a trust upon the guilty party on whom the statutes cast the legal estate, is well worthy of consideration. (See Harward 'Law Review,' vol. IV, p. 394, and vol. VIII, p. 170.)

Be this as it may, how does the matter stand with reference to the law to be administered by this Court in cases like the present?

(1) 50 Am. St. R., 765. (2) 31 Neb., 61; 28 Am. St. R., 500.
(3) 115 N.Y., 506; 12 Am. St. R., 819.

No doubt the personal law of the parties to the dispute is the Hindu Law of Succession. If that law lays down any definite rule with reference to the question to which the facts of the present case give rise, it is of course not open to this Court to decline to enforce that rule on the ground that it would be more equitable in its opinion so to decline. If, however, in regard to such a question the Hindu Law is altogether silent, the rule to be applied would be that of equity, justice and good conscience. Now does the Hindu Law lay down any rule in regard to the precise point at issue, viz., whether a person murdering another for the purpose of accelerating the succession to him is or is not entitled to the succession? If the well-known text of Yagnavalkya, "The wife, and the daughters also, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student; on failure of the first among these the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue," (Stokes' 'Hindu Law Books,' p. 427) which is the foundation of the Mitakshara law of inheritence to the property of a male dying separated, is to be read as containing an explanatory clause negativing every possible exception, then doubtless the defendant must succeed. That however is indisputably not the case. For take the very first instance mentioned in the text, that of the wife. Supposing she had been unchaste during the lifetime of her husband, it cannot of course be argued that by virtue of the text she would be his heir in spite of her misconduct. Idiocy, lunacy, certain incurable diseases entry into the order of *yati*, etc., are, like unchastity in the case of the wife, circumstances that would in the case of those with regard to whom they are predicable preclude the operation of the rule embodied in the text. No doubt such cases are provided for by rules of Hindu Law to be found in other texts. But that does not derogate from the soundness of the view that the text under which the defendant claims enunciates but a general rule whose effect is liable to be nullified more or less by facts other than the two postulated therein, viz., the demise of a male owner of property without co-parceners and the survival of the relation specified in the text. What such facts are has to be ascertained either with reference to the rules embodied in other Hindu texts or with reference to principles which it is the duty of the Court to follow as a tribunal bound to administer the law of justice, equity and good conscience in cases not provided for specifically.

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Consequently, whether the fact that a person who would be heir by virtue of that text murders him to whom he would thus be heir detracts from his right of succession is a question to be decided in the first place with reference to the provisions, if any, of the Hindu law to be found elsewhere than in that text, and in the absence of such provisions according to recognised general principles which it is legitimate for the Court to resort to in such a contingency.

In the argument addressed to us our attention was not drawn to any Hindu authority that may be said specifically or directly to bear upon the matter. Texts relating to degradation attaching to a person by reason of the sin involved in the commission of murder which is a crime of the highest degree according to the classification of Hindu lawyers cannot, for reasons adverted to in a previous part of this judgment, avail in the discussion of this question. The text purporting to exclude from the succession a son "hostile to the father" undoubtedly shows how repugnant to the spirit of the Hindu Law must be the contention that the estate of a deceased person passes to the heir who murders him, as if it were a reward for his unnatural act. But whether from the extreme generality of the expression, which has been interpreted by different commentators to include a variety of things from abuse of to murderous attacks on the father and even what takes place after his death such as failure to offer the customary oblations (see Jolly's 'Narada,' vol. XXXIII, Sacred books of the East, p. 194, Note on verse 21), or on some other ground, this text has never been acted upon and it also must be considered obsolete. Even were it otherwise, relating as the text does to the case of *father and son* there would be no warrant for treating the words importing that relation as merely illustrative and virtually comprehending all cases of heritable relations, the foundation of the rule being most probably the special reverence and regard to the father as head of the family inculcated by the Hindu Sastras.

The point under consideration is clearly therefore one untouched by the Hindu Law. Turning then to the general law how does the matter stand? The answer is absolutely plain, for the principle expressed by, among others, the maxim "*nemo ex suo delicto meliorem suam conditionem facere potest*" is one almost of universal law. Some of the comments of Bronchorst on this maxim in his work on the rules of the Roman Law (p. 106) seem

to have peculiar appositeness here. "This rule" he writes "is replete with justice and equity, for it is not agreeable to reason that any one should derive advantage from that which deserves punishment. Thus, if a husband shall have agreed in the marriage articles that the dowry of the wife shall be restored to him in the event of her death and if he shall contrive to bring about that event either by destroying her or by not calling in a physician when she is sick or by fraudulently employing an unskilful one in order to hasten her death, he shall not be entitled to the restitution of the dowry. For it is not agreeable to equity that the husband should thus benefit by his crime." The case dealt with in the above extract is no doubt one of contractual relation. That the application of the maxim is, however, not confined to such a relation only is manifest from the decision of the Queen's Bench in *Cleaver* v. *Mutual Reserve Fund Life Association*(1), where the Court refused to enforce a trust in favour of one who had brought about the conditions essential to its fulfilment by killing the person whose death made it operative. The principle of this decision has been extended in this country with reference to the legal relation of decedent and heir in the case of *Shah Khanam* v. *Kalhandharkhan*(2), where the Chief Court of Punjab held that a Muhammadan who had murdered his half brother could not be allowed to claim the deceased's property as his heir. This decision cannot but commend itself as right considering that the legal relation to which the maxim in question was thus in effect extended is one pre-eminently calling for such extension, implying as it does reciprocal affection and kindliness attributable to the natural tie subsisting between persons so connected, and that to hold otherwise would be to outrage every feeling of humanity.

This being so, the only question is as to the proper theory of giving effect to the maxim in cases like the present, that is to say, whether the wrongful act of the person standing in the position of heir is to exclude him from the inheritance so as to prevent the very vesting in him thereof, or is it to be treated as a fact that should merely disentitle him to any beneficial interest in the inheritance. It is the latter view that would seem to be supported not merely by the analogy of the Civil Law, but also by a provision of our own legislature in a not dissimilar case. It

(1) L.R., [1892], 1 Q.B., 147. (2) Vol. I, Punjab Rep., 455.

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has also a practical advantage which the theory of non-vesting of the inheritance does not possess and which makes it therefore the more acceptable from the point of view of a tribunal administering both law and equity.

Now according to the Civil Law the killing of the decedent by the heir, intentionally or even negligently, was among the causes which rendered the heir unworthy of the inheritance. This doctrine of unworthiness was, however, not given effect to by intercepting the vesting of the inheritance itself. In Mackeldey's work, to which reference was made in the course of the argument, the law on the point is thus succinctly stated: "There are a number of cases in which the heirs or legatees are deprived for unworthiness of the property left to them. In these cases, which are termed cases of unworthiness (indignity), the law says *heres vel legatarius capere non potest* (the heir or legatee is incapable of taking) or *ei eripitur* (wrested from)," p. 550. Dropsie's 'Translation of Mackeldey's Roman Law.') This last phrase of the learned author points to the view that in such cases what really happens is not that the vesting of the succession is prevented but that what was vested in accordance with the law is wrested away on ground of justice and equity. And Sohm in his Institutes (p. 472) says "The unworthiness does not prevent either *delatio* or *acquisitio*. But the law declares that the property which has vested in an indignus shall be divested again (*eripi*) either in favour of the fiscus or in favour of a third party entitled (*bona ereptoria*). He is considered unworthy to *keep* the inheritance." The unmistakeable clearness and directness with which the matter is stated in the passage just quoted renders it superfluous to refer to other authorities, citing some of which it was pertinently pointed out in regard to the references to the Civil Law made in *Riggs* v. *Palmer*(1), *ereptio propter indignitatum* is a case not of revocation but of restitution. (8 Harward 'Law Review,' p. 170.)

The provision of the legislature alluded to above is section 85 of the Indian Trusts Acts, paragraph 2, which says "where property is bequeathed and the revocation of the bequest is prevented by coercion the legatee must hold the property for the benefit of the testator's legal representative." Such being the theory adopted by the law in the case of coercion used for the purpose of

(1) 115 N.Y., 506; 12 Am. St. R., 819.

preventing revocation of dispositions under a will, that must necessarily be the theory to be followed when the same end is compassed by murder as also when the succession secured by the same unlawful means is intestate instead of testamentary.

The practical advantage attending the view under consideration to which also allusion was made above is this;—it is not impossible, especially in cases where the murder is secret, that the guilty *primâ facie* heir may succeed in passing himself off for a time as an innocent possessor and make transfers to third parties without notice. In such cases, if the doctrine of exclusion were to prevail *bonâ fide* purchasers from him would be unprotected. The theory of trust however, while saving the law from the reproach of permitting a person to retain the fruits of an act superlatively wrongful or of enabling purchasers with notice to take from him with impunity, would amply protect *bonâ fide* purchasers.

It only remains to add that the beneficial interest in the inheritance vests in those who would be entitled to it were the guilty heir out of the way, on the manifestly equitable ground stated by Domat that those who would come in by reason of his exclusion should not be affected by his wrongful act. (Domat's 'Civil Law,' Part II, Book I, sec III, section 2547.)

The question of conviction or acquittal, on which some stress was laid on behalf of the defendant, would no doubt be relevant were the matter one of punishment for a crime, but here the Court is concerned only with private rights of parties as affected by a wrongful act, though such wrongful act may, from the point of view of the Criminal Law, be a punishable act. Attainder for murder under the English Law, to which allusion was made in the argument, no doubt presupposes a conviction, but this Court cannot possibly resort to so special and peculiar a doctrine of that law in laying down a rule of justice, equity and good conscience, as it is here called upon to do.

In the view taken by us the lower Court ought to have tried the question whether the defendant did commit the wrongful act imputed to her. The decree of the lower Court is reversed and the suit remanded for disposal according to law. The costs will abide the event.