1875. *August* 23.

than life can only be passed under the provisions of s. 59, and consequently that when an offence is punishable, either with transportation for life or imprisonment which may extend to ten years, if a sentence of transportation for a term less than life is awarded, the term cannot exceed ten years.

BEFORE A FULL BENCH.

1875. *August* 23.

(Before Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)

MUSAMMÁT GANGA JÁTI (DEFENDANT) *v.* GHASITA (PLAINTIFF).*

Hindu Law—Stridhan—Inheritance—Unchastity.

Per TURNER, OFFG. C. J. and OLDFIELD, J.—Unchastity in a woman does not incapacitate her from inheriting *stridhan*.

Per PEARSON and SPANKIE, JJ.—Unchastity in a woman does not preclude her from keeping possession by right of inheritance of *stridhan*.

GHASITA, plaintiff, on behalf of his minor son, Mithai Lál, sued Musammát Ganga Jati, his wife, to obtain possession from her of two houses left by Musammát Radha, her maternal grandmother. It appeared that the defendant's mother died in the lifetime of her grandmother, and that the plaintiff and his wife lived with her grandmother until his wife left her home with a paramour, when the plaintiff went to his own home, taking his son with him. The defendant once sued her husband for maintenance, but the suit was dismissed on the ground that she was leading a life of profligacy. Subsequently to this her grandmother died, and the defendant took possession of the houses in suit. The plaintiff obtained a certificate of guardianship to Mithai Lál, although the defendant claimed the right to be his guardian, and it was again recorded that the defendant was a woman of bad character.

The defendant pleaded that the suit to dispossess her was not maintainable, as Mithai Lál was not an heir, according to Hindu

* Special Appeal, No. 225 of 1875, from a decree of the Judge of Mirzapur, dated the 28th January, 1875, reversing a decree of the Munsif, dated the 22nd August, 1874.

law, of Musammát Radha, being a daughter's daughter's son. The Court of first instance allowed the plea and dismissed the suit. The lower appellate Court held that the defendant was excluded from inheritance by the fact of her unchastity and decreed the claim. The defendant appealed to the High Court. 1875. *August* 3.

The grounds of appeal raised the question whether a woman was incapacitated by reason of unchastity from inheriting *stridhana*, and this question the Court (Spankie and Oldfield, JJ.) referred to a Full Bench.

Pandit *Nand Lál* and Pandit *Ajudhia Náth* for appellant.

Lála *Lalta Parshád* for respondent.

Pandit Nand Lál.—Under Hindu law, the right of succession to property in general depends on the capacity to confer spiritual benefits on the ancestors. The difference in the order of succession to a woman's peculiar property shows that the right of succession to it does not depend on such a capacity, and an incapacity therefore will not exclude from inheritance. There is no expression anywhere of a disability to succeed to *stridhana*, and it cannot be implied. A daughter being entitled to inherit, is entitled to inherit, chaste or unchaste

Lála *Lalta Parshad.*—It is provided that unchastity in a widow creates a forfeiture, but there is no provision as to the chastity of a daughter or other female relation. But the rules which exclude from inheritance apply generally to all property. A man who is an outcast cannot inherit. A woman who is unchaste becomes an outcast.

TURNER, OFFG. C. J.—It appears to me immaterial whether the property in suit was or was not the *stridhan* of the grandmother. In either case, I am of opinion that the daughter is not deprived, by her unchastity, of her right of succession under the law administered by our Courts.

The objection to her succession is only based on the general rule embodied in the text of Narada cited in the Mitákshara (ch. ii, s. 10), and again in the Dayakrama Sangraha (ch. iii), and in Dayabhaga (ch. v., s. 13), that a person addicted to vice does not inherit.

1875. *August* 23

No doubt this rule is cited and treated as well established by the author of the Mitákshara, but for many years it has not been enforced in our Courts.

I was myself a party to a decision in which it was held that want of chastity in a mother does not defeat her right of inheritance, and the same rule which, it is contended, deprives a daughter of a right of succession, would also operate to deprive the mother of succession.

PEARSON, J.—The question which arises in this case is whether Musammát Ganga Jati is precluded, on account of her unchastity, from keeping possession, by right of inheritance, of the estate left by her maternal grandmother. If we are to understand that she is leading a vicious life, she might appear to be so precluded by a strict and literal application of the Hindu law. Among those described as excluded from inheritance is "one who is addicted to vice." Mr. Colebrooke, however, says, in regard to the causes of disinheritance mentioned in the tenth section, ch. ii, of the Mitákshara, that, while he is not aware that any have been abrogated or become obsolete, he does not think that any of our Courts would go into proof of one of the brethren being addicted to vice, or profusion, or being guilty of neglect of obsequies and duty towards ancestors. Since this remark was recorded by Mr. Colebrooke more than half a century has elapsed, and it may perhaps be doubted whether such causes of disinheritance as those indicated by him have not become obsolete in practice. It is less probable now than it was then that our Courts would recognize any one of those causes as a sufficient ground for declaring any man incapable of inheriting property; and if this be so, one would hardly be justified in depriving the (defendant) respondent in this case of her maternal grandmother's estate.

As to the text which says that "a woman, who acts maliciously, and is shameless, and a destroyer of property, and addicted to immorality, is unworthy of wealth," I have had occasion in another case to observe that it cannot, without violence, be construed to mean that she is to be deprived of property which has come into her possession; and there is reason to believe that the text refers only to property received by her from her husband.

1875. *August* 23.

I am therefore disposed to answer in the negative the question which has been put to us as it arises in the case in appeal.

SPANKIE, J.—I agree entirely with this opinion.

OLDFIELD, J.—There is no passage to be found in the Mitákshara or other authority followed in the Benares school, debarring a woman living in unchastity from inheriting *stridhana*.

It is not expressed among the causes of exclusion from inheritance in ch. ii, s. 10, Mitákshara, and whether it would become so when accompanied by deprivation of caste is not the question before us.

There is a text of Narada cited in Mitákshara, ch. ii, s. 10, v. 3, to the effect that one who is addicted to vice takes no shares of the inheritance, but the Courts would not give effect to a text of this nature, vague in itself and obsolete in practice.

The only other passages to be found in authorities recognized in the Benares school, from which such exclusion from inheritance can in any way be inferred, are certain passages in the Viramitrodaya of Mitra-Misra in the chapter treating of *stridhana* in Bk. xi., s. 1, para. 17. The author, after stating that, on a wife's supersession by her husband taking a second wife, he must restore to her the property she may have given him, and that she may exact maintenance, confines the operation of this rule to the case in which she is blameless, and remarks;—"A wicked wife receives no separate property whatever," and goes on to cite the text of Catyayana:—"A wife who acts unkindly towards her husband, who is shameless, who destroys his effects, and who takes delight in being faithless to his bed, is unworthy of separate property." But this passage refers to a particular kind of property, that which the wife has given to her husband for his use, or which she is entitled to receive from him on his taking another wife. The same passage from Catyayana is cited in the Smriti Chandrika, ch. ix, s. 11, para. 24, referring to the same description of *stridhana*. It cannot be inferred from such passages that a woman is excluded from inheriting *stridhana* from her female relations.

It was argued before us that the right of succession to *stridhana*, equally with the succession to other property, is inseparable from

1875. *August* 23.

the capacity to confer benefits on the ancestors, and that this capacity is lost by reason of unchastity. It may be that the right of succession to *stridhana* is intimately connected with such a principle by the law current in Bengal, as would appear from the Dayabhaga, Dayakrama Sangraha, Vyavastha Darpana, but it is also certain that, even by that law, the right of succession to this kind of property does not rest exclusively on such a principle. This appears from the permitted succession of barren and widowed daughters, notwithstanding they confer no direct benefits through the medium of sons; and the note to ccccxcviii, Colebrooke's Digest, vol. 2, page 612, gives the general opinion that the advantages afforded are not principally considered in treating of separate property held by women. Under the law of the Mitákshara this is still more the case, and throughout that work, and the commentators, no allusion is made to the principle of succession to *stridhana* resting on a capacity to benefit the ancestors by offering funeral oblations. In Macnaghten's Hindu Law it is stated that "this description of property is not governed by the ordinary rules of inheritance: it is peculiar and distinct, and the succession to it varies according to circumstances." In fact a woman succeeds to *stridhana* rather by reason of consanguinity and in order to afford her some provision. This is shown to be so from the fact that those persons who are worst provided for, or least capable of providing for themselves, are the first in the order of heirs. The argument must, therefore, I think, be dismissed which rests the exclusion from inheritance on the incapacity to confer benefits on the deceased. Nor does the fact that the unchaste widow is excluded from inheriting her husband's separate estate afford any argument in the case before us, as the widow's exclusion rests on express texts and with reference to grounds inapplicable to the case of a woman's succession to the *stridhana* of her female relations; and the same may be said of the rule which imposes chastity as a condition on the claim of dependent female members of a family to be supported from the estate in the hands of the male members.

No decided cases on the point have been brought to our notice. There is only the case in vol. 2, Macnaghten's Hindu Law, p. 132, where, in answer to the question,—Can a daughter who lives in a

1875. *August* 23.

state of prostitution take her parent's property by right of inheritance, the reply is given,—"a daughter who has given herself up to prostitution, or one who is unchaste, is wholly incompetent to inherit the property left by her parents." But it is not clear if this refers to *stridhana*, or if the exclusion is by reason of unchastity entailing loss of caste.

In the absence of any express law, or of any custom handed down or supported by a course of decisions of the Courts, the answer to the reference should, I apprehend, be that unchastity will not disqualify a woman from inheriting the *stridhana* of her female relations.

APPELLATE CIVIL.

1875. *July* 20.

(Mr. Justice Spankie and Mr. Justice Oldfield.)

FATIMA BEGAM (PLAINTIFF) *v.* SAKINA BEGAM AND ANOTHER (DEFENDANTS)*.

Dwelling-place—Act VIII. of 1859, *s.* 5.—*Act XXIII. of* 1861, *s.* 4.—*Jurisdiction.*

THE fixed and permanent home of a man's wife and family, and to which he has always the intention of returning, will constitute his dwelling-place within the meaning of s. 5 of Act VIII. of 1859, and s. 4 of Act XXIII. of 1861.

THE plaintiff, who was the daughter of Yasin Khan, deceased, sued in the Court of the Subordinate Judge of Farukhabad to recover her share of the estate left by her father, consisting of immoveable and moveable property in the district of Farukhabad, and the sale proceeds of a house at Calcutta. The defendants were the widow of Yasin Khan, Musammat Sakina Begam, and his nephew Azim Khan, who had married the widow. At the time the suit was brought, Azim Khan, who was a sawár in the Scinde Horse, was with his regiment. The defendant Musammat Sakina Begam was residing in his family residence in the district of Farukhabad. The Court of first instance decreed the claim in part. The lower appellate Court reversed the decree and dismissed the suit on an objection taken by the defendants' pleader in appeal, that the suit was not maintainable with reference to s. 4 of Act XXIII. of 1861, which requires that the sanction of the High Court should be

* Special Appeal, No. 573 of 1875, from a decree of the Judge of Farukhabad, dated the 11th May, 1875, reversing a decree of the Subordinate Judge, dated the 27th January, 1875.