section 423 did not exist as a portion of the Code of Criminal Procedure. In any case we are satisfied that we have the power. We grant the leave. The petition of composition when accepted by the court below will have the effect of an acquittal of the accused.

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EMPEROR v. RAM PIYARI.

Application allowed.

APPELLATE CIVIL.

1909 *December* 16.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

DAL SINGH (PLAINTIFF) *v.* MUSAMMAT DINI (DEFENDANT).*

Succession—Hindu Law—Unchastity of widow no bar to her right of succession to her son.

There is no authority for holding that a Hindu lady who after her husband's death has waited and then gone to live with another man is thereby excluded from inheritance to the estate left by her son.

THE facts of this case were as follows:—

On the death of Bhuri Singh, a separated Hindu, his estate was claimed by his mother, Musammat Dini. Her claim was resisted by Dal Singh, uncle of Bhuri Singh, on the ground that Musammat Dini, having become unchaste, was debarred from inheriting the property of her son. The court of first instance found in favour of Musammat Dini, on the ground that her unchastity had not been established. The lower appellate court came to the conclusion that she had become unchaste, but that it was after the death of her husband; and, holding that the disqualification on the ground of unchastity applied only to the case of a widow claiming the estate of her husband and not to a mother claiming the estate of her son, confirmed the decree in her favour. The plaintiff appealed.

Munshi *Govind Prasad* (with him Mr. *M. L. Agarwala*), for the appellant:—

An unchaste woman is disqualified, under the Hindu Law, from inheriting. The ruling in *Musammat Ganga Jati* v. *Ghasita* (1) relied on by the lower court does not apply to the

* Second Appeal No. 601 of 1908 from a decree of Mubarak Husain, Subordinate Judge of Shahjahanpur, dated the 25th of March, 1908, confirming a decree of Kherod Gopal Banerji, Munsif of Tilhar, dated the 12th of September, 1907.

(1) (1875) I. L. R., 1 All., 46.

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circumstances of the present case, inasmuch as that was a case relating to *stridhan* property and to the succession of a grand-daughter, and not to the case of a mother. Neither does the ruling in *Narain Das* v. *Tirlok Tiwari* (1) apply to the present case. In that case the question was whether the husband could succeed to the property of an unchaste wife, who had become a prostitute. There is no express authority of the Allahabad High Court against me. There are, however, two decisions of the Madras High Court against me:—*Kojiyadu* v. *Lakshmi* (2) and *Vedammal* v. *Vedanayaga Mudaliar* (3). I rely upon both texts and rulings. There are no express texts relating to the case of a mother, but there are texts for the case of a widow, and I submit that the same rule that applies to a widow would apply to a mother. The text relating to the case of a widow is to be found in Mitakshara, chapter II, section I, CXXXVI, Note 6. I rely on a text of Narada to show that she who is addicted to vice cannot inherit. *Mitakshara*, chapter II, section XCCXL, Notes 3 and 8. The mother who has become unchaste falls within the category of persons "addicted to vice." *Ramnath Tolapattro* v. *Durga Sundari Debi* (4) and *Moniram Kolita* v. *Keri Kolitani* (5) were also referred to.

Mr. *B. E. O'Conor* (for the respondent) was not called upon.

KNOX and KARAMAT HUSAIN, JJ.—The sole plea set forth in the memorandum of appeal is that the respondent, who is a Hindu widow and who had become unchaste during her husband's lifetime, is not entitled to succeed as mother to the estate of her son. The plea as set out is apparently an error, for, according to the judgment of the lower appellate court, the alleged unchastity of the respondent took place, not during her husband's lifetime, but after his death, and the plea, if it is to have any force, should run thus, *viz.* that the respondent, being unchaste, is not entitled to succeed to her son's estate. Mr. *Govind Prasad*, who appears for the appellant, has been at considerable pains to look up the authorities and to lay them before us, but beyond an observation of Narada, in which that author puts an interpretation upon the words "अचिकित्स्यरोगग्रस्ता" contained

(1) (1906) I. L. R., 29 All., 4.
(2) (1882) I. L. R., 5 Mad., 149.
(3) (1907) I. L. R., 31 Mad., 100.
(4) (1878) I. L. R., 4 Calc., 550.
(5) (1880) I. L. R., 5 Calc., 776, at page 787.

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in the text of Yajnavalkya, he can show us no text which would authorize us to hold that a Hindu lady, who, after her husband's death, has taken to living with another man, is thereby excluded from inheritance to the estate left by her son. The current of rulings in other Presidency High Courts is against the appellant and there are, in cases of our own Court, passages which point in the same direction. There is no case, however, of this Court which exactly covers the point now in issue before us. We have therefore to consider the text of Yajnavalkya, which is quoted as an authority for the proposition, together with the commentary of Narada on the same, and to see whether they contain sufficient authority for the plea raised. We think they do not. The text in question is to be found in the *Mitakshara*, chapter II, section X, sloka 140, the chapter which deals with the subject of inheritance. The translation of this sloka given by Colebrooke runs as follows:—"An impotent person, an out-caste and his issue, one lame, a mad man, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained, excluding them, however, from participation." The words "similarly disqualified" do not occur in the original; they are a gloss put upon the original text by the translator. Even so, this text does not in express terms refer to a woman who is alleged to be unchaste as being excluded from inheritance. She could only come, if she comes at all, under the word आद्या "others." The commentary of Vijnaneswara on this last word runs thus:—"Under the term 'others' are comprehended, one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus Vasistha says, 'They, who have entered into another order, are debarred from shares.' Narada also declares, 'an enemy to his father, an out-caste, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate. Much less, if they be sons of the wife by an appointed kinsman." Even here again there is no direct allusion to unchastity. It is not as if the idea of unchastity was absent from the learned commentator's mind, because the fact of unchastity is expressly alluded to in sloka 142 of Yajnavalkya, just two slokas below the particular sloka with

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which we are dealing, and in the commentary on that sloka (see याज्ञवल्क्यः २ अ।१४०-१४२।). The learned vakil for the appellant did not take his stand upon the word out-caste (पतितः) for obvious reasons: see Act No. XXI of 1850. He maintains that the respondent is included in the word "औपपातिक" which Sir William Colebrooke translates, somewhat unhappily, as "addicted to vice," for उपपातः is a sin of a lesser degree, which is possible of expiation, and hardly "vice" as the word is commonly understood. The text of Narada thus quoted is to be found in नारद: २३ अ । २१ । and is a commentary of Narada on the institutes of Manu, book IX, sloka 201, and this being so it is well to look first at the text of Manu. Sloka 201 is thus translated by G. Buhler (Sacred Books of the East, Vol. XXV, page 372)—"Eunuchs, and out-castes, (persons) born blind or deaf, the insane, idiots and the dumb, as well as those deficient in any organ (of action or sensation) receive no share." Here there is no allusion to the "Upapatikas" or persons addicted to the lesser vices, and Narada in adding the word is evidently expanding the words of the "Holy Manu." Unfortunately it is open to considerable doubt whether the word "उपपातिकः is the exact word for which the sage Narada is responsible. As Mr. Jogendra Chander Ghose points out in his valuable treatise on the "Principles of Hindu Law" page 230, there are three different readings extant of this particular text. The Kalpataru, the Ratnakara, and the Parijata read अपपात्रितः and Saraswati Vilasa reads अवपातिक For औपपातिक the Dayabhaga really is responsible. Unfortunately we have not in this library a copy of Narada's text as it stands in the original. The various readings in the order in which I have given them mean (a) a person guilty of a heinous crime—the killing of a Brahman or of a King are illustrations given of the word by learned commentators; (b) Persons guilty of grave slips in conduct; (c) Persons addicted to the minor vices. The margin given by these readings is very wide, too wide indeed, but enough has been said to show how unsafe it would be to hold that an unchaste woman falls under any, and if so under which of them. It must throughout be remembered that we have not in this case to deal with the instance of a woman

found to have been unchaste in her husband's lifetime, or of a widow inheriting her husband's property and taking with the property the duties involved in such inheritance. Those cases have to be viewed possibly and probably from another standpoint: other principles are involved.

In this case the particular unchastity alleged and found is that some six or seven years after her husband's death the respondent eloped with a Brahman. The appeal in this case has been to Narada, and it will not be amiss to see how the Rishi Narada looks upon such an act as the one attributed to the respondent. The case is exactly one which he contemplates and on which he gives no uncertain pronouncement in his book XII, vv. 97 to 101. They run as follows:—

97. When her husband is lost or dead, when he has become a religious ascetic, when he is impotent, and when he has been expelled from caste: these are the five cases of legal necessity, in which a woman may be justified in taking another husband.

98. Eight years shall a Brahman woman wait for the return of her absent husband: or four years, if she has no issue: after that time, she may betake herself to another man.

99. A Kshatriya woman shall wait six years: or three years if she has no issue; a Vaishya woman shall wait four (years) if she has issue; any other Vaishya woman (*i.e.* one who has no issue) two years.

100. No such (definite) period is prescribed for a Sudra woman whose husband is gone on a journey. Twice the above period is ordained, when the (absent) husband is alive and tidings are received of him.

101. The above series of rules has been laid down by the creator of the world for those cases where a man has disappeared. No offence is imputed to a woman if she goes to live with another man after (the fixed period has elapsed).

In the light of the above texts it can hardly with any show of justice, we think, be pleaded that Musammat Dini is an **औपपातिका** still less an **अवपातता** or an **अपपात्रिका**.

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There is thus no authority for the contention that a widow who after her husband's death lives with another man commits an act of unchastity or vice.

The appeal fails and is dismissed with costs.

Appeal dismissed.

1909 *December* 17.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.

SAID-UD-DIN KHAN AND OTHERS (DEFENDANTS) *v.* RATAN LAL (PLAINTIFF).*

Act No. XV of 1877 *(Indian Limitation Act), schedule II, articles* 134, 148—*Mortgage—Redemption by one mortgagor—Nature of possession—Subsequent sale under another mortgage decree—Suit by another representative of mortgagor for redemption—Limitation.*

G, in 1850, mortgaged certain property and died, leaving a son, a daughter, and a widow. The son obtained a decree for redemption of the whole, which was sold to M H, G M, and A, who redeemed the mortgage. After the passing of this decree G's son and widow mortgaged certain shares in the villages affected by the original mortgage, and in 1891 these shares were sold in execution of a decree for sale and purchased by M H and the representatives of G M and A.

Held, on suit by the representative of G's daughter to redeem her share, that article 148 and not article 134 of the second schedule to the Indian Limitation Act, 1908, applied and the suit was not time-barred.

THE facts of this case were as follows:—

One Ghulam Mustafa Khan executed a usufructuary mortgage-deed in respect of his share in certain villages in favour of one Mohan Lal, on the 5th of September, 1850. The heirs of Mohan Lal in their turn sub-mortgaged the property to certain other persons. Ghulam Mustafa died, leaving three heirs, Ghulam Nabi, a son, Shams-ul-nissa, a widow, and Ashraf Begam, a daughter. Ghulam Nabi brought a suit for redemption and obtained a decree against the mortgagees and the sub-mortgagees on the 26th of February, 1872. The decree, however, was subsequently put up for sale in execution of a simple money-decree obtained against Ghulam Nabi and was purchased by one Meghraj Singh on the 25th May, 1875. Meghraj Singh sold it to Muhammad Husain, Ghulam Muhi-ud-din Khan, and Azim-ullah Khan. These persons paid off the decretal amount under the decree and redeemed the entire mortgaged property. Prior to the redemption, however, Ghulam Nabi and Shams-ul-nissa had mortgaged the property to one Jauhari

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* Appeal No. 52 of 1908 under section 10 of the Letters Patent.