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some notice. The passage is this :—" If one should say ' I have given this mansion to thee for life, and to thy successor,' it would only be an *oomra*, or for his own life, and there would be no transfer to the life-holder, according to the most approved opinion ; just as if he had not said ' to thy successor.' " If such is the Imameea Law it is difficult to understand, and still more difficult to appreciate, a limitation of interest which necessitates the striking out from the words of gift its distinctly expressed extension to a " successor." The author does not explain what he is pleased to call " the most approved opinion." It is at least a most arbitrary construction of the gift, confessing, as it appears to do, that it could not stand if the terms " to thy successor" also remained part of the gift. In the present case, however, the estate given by the gift is conveyed in much larger terms, giving the house to the donees " for their residence and that of their heirs, generation after generation: I or my heirs neither have nor shall have any claim regarding the house in question,"—words which, if they are capable of any legal meaning, clearly and distinctly bestow the right to the thing given absolutely.

FULL BENCH.

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April 5.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

DEO KISHEN (DEFENDANT) *v.* BUDH PRAKASH (PLAINTIFF).*

Hindu Law—Inheritance—Insanity.

A person is disqualified under Hindu Law from succeeding to property, if he is insane when the succession opens, whether his insanity is curable or incurable.

Under the same law, when property has once vested by succession in a person, his subsequent insanity will not be a ground for its resumption.

Under the same law, although a person becomes qualified to succeed to property, after the disqualification of insanity ceases, he cannot resume property from an heir who has succeeded to it in consequence of his disqualification when the succession opened.

* Second Appeal No. 110 of 1882, from a decree of H. F. Evans, Esq., Judge of Moradabad, dated the 16th September, 1881, affirming a decree of Maulvi Samiullah Khan, Subordinate Judge of Moradabad, dated the 29th April, 1881.

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DEO KISHEN v. BUDH PRAKASH.

Dwarkanath Byse v. *Mahendranath Pysak* (1); *Braja Bhukan Lal Alusti* v. *Kishan Dobi* (2); *Kalidas Dasv. Krishan Chandra Das* (3) referred to.

THE plaintiff, Budh Prakash, brought the present suit against the defendant Deo Kishen for possession of certain immoveable property. The plaintiff claimed as the daughter's son of one Girdhari Lal deceased. The defendant contended, *inter alia*, that as Indrain Kuar, the widow of Girdhari Lal, was alive, the plaintiff had no title during her lifetime. On behalf of the plaintiff it was alleged that Indrain Kuar was insane and had been so at the time of her husband's death; and it was argued that such being the case, she was disqualified from inheriting. The Court of first instance found that the plaintiff's allegations as to the insanity of Indrain Kuar were correct, and held that she was not entitled to inherit, and gave the plaintiff a decree. On appeal by the defendant the District Court affirmed the decision of the first Court. The defendant Deo Kishen then appealed to the High Court. The first two grounds of appeal were as follows:—(i) The decision is bad in law in that Indrain Kuar, widow of the deceased Girdhari Lal, and grandmother of the plaintiff, being alive, the plaintiff cannot, according to Hindu Law, maintain the present suit; and in that Indrain Kuar, having admittedly not been born insane, but having become so after her marriage, cannot be deprived of her right of inheritance: (ii) In order to disqualify a person from inheritance on the ground of insanity, it is absolutely necessary according to Hindu Law that his insanity should be congenital; but in the present suit no such thing was either alleged or proved as regards Indrain Kuar. The Divisional Bench before which the case came on for hearing (TYRRELL and MAHMOOD, JJ.) referred the question raised by these grounds to the Full Bench in the following terms:

TYRRELL, J.—This appeal raises the important question whether a Hindu, in this case a woman, who was born sane, but subsequently became a lunatic, was insane at the time of her husband's death and is so still, must be regarded as a person disqualified absolutely and for all time to inherit or take the ancestral estate. In general terms, must insanity to justify disqualification be

(1) 9 B. L. R., 198. (2) 9 B. L. R., 204 note.
(3) 2 B. L. R., F. B., 103.

proved to be congenital and therefore presumably incurable? We refer the question to the Full Bench.

Mr. *Dillon*, Munshis *Hanuman Prasad* and *Sukh Ram*, Pandit *Nand Lal*, and Mir *Zahur Husain*, for the appellant.

The *Senior Government Pleader* (La'a *Jwala Prasad*), for the respondent.

The following opinions were delivered by the Full Bench :—

STRAIGHT, OLDFIELD, BRODHURST and TYRRELL, JJ.—The subject of exclusion from inheritance is treated of in Ch. II, sect. X, Mitakshara, and verse 1 includes, among persons who are disqualified from succession, a madman and an idiot; and in the 2nd verse a "madman" is explained to be one affected by any of the various sorts of insanity proceeding from the air, bile or phlegm, from delirium or from planetary influences, and an "idiot" is said to be a person deprived of the internal faculty, meaning one incapable of discriminating right from wrong. The fact that some distinction is drawn between idiotcy and madness, and the definition given to the latter form of insanity in the 2nd verse, would certainly imply that the insanity which excludes from succession is not necessarily congenital; and taken with the 6th verse—"They are debarred of their shares if their disqualification arose before the division of the property"—the inference may be drawn that insanity existing at the time the succession opens is sufficient to exclude from inheritance.

The Smriti Chandrika, which is a work of some authority on this side of India, when not opposed to the Mitakshara, is very explicit. In Ch. V, verse 9, it is stated:—"It must be understood that such as appear at the time of division to have been afflicted with impotence, &c., are excluded from their shares, and that the exclusion is not confined to those only that are naturally (that is by birth) important, or the like." Nor does it appear necessary that the insanity be incurable, for the 7th verse of the same Ch. II, sect. X, Mitakshara, clearly contemplates the case of a cure, and provides that "if the defect be removed by medicaments and other means (as penance and atonement) at a period subsequent to partition, the right of participa-

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tion takes effect;" and this rule is clearly expressed in the 4th verse of Ch. VIII, Viramitrodaya:—"If subsequently (to partition or succession) their defects are cured by medication or the like, they become entitled to obtain their shares; and this is reasonable, because it is by reason of the defects that they were disqualified to share."

As the disqualification arises with reference to incapacity to perform religious ceremonies for the deceased, it is reasonable to suppose that it would have effect if it exists at the time the succession opens, and without reference to the incurability of the disorder.

But when property has once vested by succession in the heir, his subsequent insanity will not be a ground for its resumption. On this point Viramitr odaya, Ch. VIII, verse 4, is explicit. After stating that the exclusion takes place if the disqualification occur previously to succession, the author proceeds—"but not also if subsequently to partition (or succession), for there is no authority for the resumption of allotted shares." And on the same principle that property once vested cannot be divested, although a person previously insane will become qualified to inherit property on the defect being removed, he cannot resume it from an heir who has succeeded to it in consequence of his disqualification when the succession opened, and the property will thenceforward follow the line of succession under Hindu Law.

No decision of this Court on this subject has been brought to our notice, but the view we take is in accordance with decisions of the Calcutta Court reported in 9 Bengal Law Reports, pages 198 and 204, and other cases referred to in Mayne's Hindu Law.

STUART, C. J.—I concur generally in the conclusion arrived at by my colleagues in this reference. The Hindu Law on exclusion from inheritance is, on the authorities relating to it, so vague and uncertain as to many of its details, that a satisfactory examination of the whole subject, shewing in clear terms what the law really is, would be attended with no little difficulty. Such a field of inquiry, however, is unnecessary in the present case, and what we have to do, I apprehend, is to return such an answer as will

enable the Judges of the Division Bench, from whom the reference comes, to decide the appeal.

Two conclusions, or *theses*, however, appear plainly discernible from the various texts. The first is, that congenital insanity, or, as it is otherwise termed, idiotcy, disqualifies and excludes. The second is, that supervening insanity existing at the time that the succession opens, and the property vests in another, also excludes. That such is the Hindu Law very sufficiently appears; and the principle of it is well stated by Mr. John D. Mayne in his excellent treatise on Hindu Law and Usage, 1878, page 513, where he says:—"The Hindu Law never allows the inheritance to be in abeyance, and if he is not capable of succeeding at the time the descent takes place, the subsequent removal of his incapacity will not enable him to dispossess a person whose title was better than his while the defect existed, though inferior to his own after the defect was removed." And in support of this doctrine he refers to a Full Bench ruling by the Calcutta High Court, *temp.* Peacock, C. J., who delivered the judgment, the case being *Kalidas Das* v. *Krishan Chandra Das* (1). And the law so laid down applies to females as well as to males.

It is not suggested that the insane person, who is a woman, was so from her birth, and even if she was, such insanity of a Hindu woman does not appear to disqualify her for marriage. On this subject Mr. Mayne, basing his opinion on the Institutes of Manu, Ch. II, sects. 66 and 67, says:—"A Hindu marriage is the performance of a religious duty, not a contract;" adding, "therefore the consenting mind is not necessary, and its absence, whether from infancy or incapacity, is immaterial;" and see on the same subject the same Institutes, Ch. VIII, sect. 205. But in the present case it is distinctly found on the evidence that she was insane at the time of her husband's death. That being so, she could not, according to Hindu Law, take the property as his heir, and applying this conclusion, the Division Bench will have no difficulty in disposing of the appeal.

(1) 2 B. L. R., F. B., 103.