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English Act, Statute 25 and 26, Vic. C. 89, Section 4, except that the English Act saves Mining Companies subject to the jurisdiction of the Stannaries, and, therefore, *Harris* v. *Amery* [1], which decided, on the English Act, that an association of more than twenty persons for the purpose of acquisition of gain which had not been registered being illegal, the members of it could not rely on their agreement for the purpose of establishing any right, is an authority applicable to the present case.

Willes, J., says :—"When we find an association like this, which is rendered illegal by an act of parliament, we cannot take notice of the agreement under which they become tenants, for the purpose of establishing a right in a court of law." So, too, Byles, J., says :—"The statute having declared the association in question to be illegal, no rights can be acquired by any of its members which are founded upon that which is so declared to be illegal." So here we have a partnership, or, at any rate, an association, for the purpose of carrying on a business that has for its object the acquisition of gain, and consisting of more than twenty persons, and being unregistered, it is an illegal association. It is obvious, therefore, that none of the parties acquired any rights under their agreement which can be enforced in a court of law. The rule must, therefore, be discharged with costs.

[APPELLATE CIVIL JURISDICTION.]

February 1.

ANANTA (DEFENDANT AND APPELLANT) *v.* RAMABAI (PLAINTIFF AND RESPONDENT).*

Hindu Law—Leprosy—Maintenance—Exclusion from inheritance.

Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes the person afflicted with it from a share in the ancestral estate.

THIS was a special appeal from the decision of M. B. Baker, Senior Assistant Judge at Sholápur, in the District of Poona, amending the decree of Ravji Govind, 2nd Class Subordinate Judge at Bársi.

Ramabái sued Joti and Ananta for possession of certain land, which she alleged had been sold to her by one Nagu on 17th No-

(1) L. R. 1 C. P. 148.

* Special Appeal No. 251 of 1876.

vember 1868 for Rs. 289. The plaint further alleged that Joti, having obtained a decree on a collusive mortgage of the land by Nagu, had ousted Ramabái and taken possession of the land on 18th April 1873.

Joti claimed under a mortgage from Nagu, and a decree against Ananta and Nagu's wife upon the mortgage. Ananta was a leper. He alleged that the land had been divided equally between him and Nagu, and that the sale by Nagu to the plaintiff was void as to his share.

The Subordinate Judge made a decree in favour of the plaintiff for a moiety of the land, and rejected her claim to the other moiety, which he held ought to be left as a provision for the maintenance of Ananta, though he was not, by reason of his leprosy, entitled to a share in the ancestral estate, but had a claim for maintenance only.

In the appeal preferred by Ramabái the Assistant Judge amended the decree of the Subordinate Judge by awarding the whole of the land to the plaintiff, on the ground that as Ananta, by reason of his leprosy, could not claim a share in the land, the plaintiff, if entitled to any, was, under the sale to her by Nagu, entitled to the whole.

Against this decision Ananta appealed to the High Court, contending that his leprosy, not being congenital, did not exclude him from a share in the land.

The special appeal was heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

Bomanji Phirosha for the appellant.

Shántarám Nárayen for the respondent.

WESTROPP, C.J.:—We think that we must regard the Assistant Judge as having found that the land, the subject of this suit, was undivided at the time of its sale by Nagu, (November 17th, 1868,) to the plaintiff Ramabái, and that fact does not now seem to be in controversy.

The contention of the appellant (the second defendant) Ananta is that an issue ought to have been directed to ascertain whether the leprosy, with which it is admitted he is afflicted, is congenital.

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His learned pleader has referred in support of that view to Manu, Ch. IX., pl 201, "Eunuchs and out-castes, persons born blind or deaf, mad men, idiots, the dumb, and such as have lost the use of a limb, are excluded from heritage," but neither that text nor Calluca Bhatta's Commentary upon it applies to the case of leprosy. The word "Nirindriya" rendered, as we think rightly, by Sir W. Jones, as in that passage meaning "such as have lost the use of a limb," (1) could not, even in its more extended sense of the loss of a sense, organ, limb or member, be properly applied to leprosy. We must, therefore, regard Manu as silent upon the subject and not an authority upon either side of the question. The Mitakshara treats "a person afflicted with an incurable disease" as disqualified: Ch. II., Sec. X., pl. 1, which disease it explains (pl. 2) as "an irremediable distemper such as marasmus or the like," and some classes of leprosy have been regarded as coming within that description: *Muttuvelayuda Pillai* v. *Parashti* (2) decided on the 31st October 1860, *Janardhan Pandurung* v. *Gopal and Wasudeo Pandurung*, (3) and in neither of these cases does it appear to have been so much as contended that leprosy to disqualify must be congenital. And if pl. 6 of the Mitakshara, Ch. II., Sec. X. be, as we are inclined to think it is, applicable to leprosy when incurable, it tends to show that if it supervenes at any time before partition, the person so afflicted would be excluded from a share. The case of *Murarji Gokuldas* v. *Parvatibai*, (4) which has been mentioned in the argument, does not apply here. It was a case of blindness, and is applicable to the infirmities comprised in the text of Manu to which we have referred as not dealing with leprosy or such like diseases. The reply of the Pandits of the Benares Sanskrit College, (who, as a rule, were strongly influenced by the Mitakshara doctrines,) to the case put to them, and which is mentioned in the note by Mr. Sutherland to the case of *Lakshmi Narayan Singh* v. *Tulshi Narayan Singh*, (5) clearly implies, in what they have said as to the right of the son of a leper to succeed if he were born before his father was afflicted with the leprosy which they considered to disqualify the father, that leprosy supervening after birth disqualified the leper. Sir

(1) See I. L. R. 1 Bom. 185. (2) Mad. S. D. A., Rep., 1859-1862, p. 239.
(3) 5 Bom. H.C. Rep. 145, A. C. J. (4) I. L. R. 1 Bom. 177.
(5) 5 Beng. (Calc.) S. D. A., Rep. 285.

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Thomas Strange distinguishes between infirmities, such as blindness, deafness, dumbness, &c., which to disqualify must be coeval with birth, (Vol. I., 152,) and disqualifying diseases such as leprosy, &c., (*Ibid.* pp. 154, 155, 156,), which the Hindu religion regards as visitations not only for sins committed in a preceding state, but also for sins committed in this life; and, therefore, such visitations are not necessarily congenital in order to disqualify. See also cl. 2, pl. cccxx. 3 Dig. p. 303, where the condition of congenitality is applied to insanity, blindness, or lameness by Narada, and not to obstinate or agonizing disease. He lays it down, as we deem correctly, as the result of the Hindu authorities, (see especially 3 Dig., pp. 303 to 322, ed. of 1801,) that the leprosy to disqualify must be of the sanious or ulcerous kind, which was, we think, the virulent or aggravated type of leprosy required by the Bombay and Madras cases already cited by us. We direct the Assistant Judge to try the following issues, viz. :—

1. Whether the leprosy of Ananta was of the sanious or ulcerous type generally regarded as incurable; and, 2nd, if the Assistant Judge shall determine the first issue in the affirmative but not otherwise, what is a proper maintenance for Ananta having regard to his condition of life and the nature of the property. Such maintenance should not exceed one moiety of the land sued for; but, in so saying, this Court does not intend to express any opinion whether or not the maintenance allotted ought to be equal in extent to such moiety.

The Court reserves all other questions in the cause, including the question of costs.

[APPELLATE CIVIL JURISDICTION.]

February 12.

UMABA'I, WIDOW OF SHANKARRAV (PLAINTIFF AND APPELLANT) *v.* BHAVU PADMANJI (DEFENDANT AND RESPONDENT).*

Hindu Law—Blindness—Incapacity for inheritance.

Incurable blindness, if not congenital, is not such an affliction as, under the Hindu law, excludes a person from inheritance.

THIS was a special appeal from the decision of C. H. Shaw, District Judge at Belgaum, affirming the decree of A. M. Cantem, 1st Class Subordinate Judge at the same place.

* Special Appeal No. 312 of 1876.

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Shankarrav, deceased, had obtained a decree against Padmanji, father of the defendant, Bhavu, and attached the house in dispute, as the property of his judgment-debtor. The attachment, however, was removed on the application of Bhavu, and Shankarrav was referred to a regular suit. The present suit, therefore, was instituted by Umabái, as heir of the deceased Shankarrav, to establish her right to sell the house in question. Bhavu, who was incurably blind, but had not been born blind, pleaded that the property was his own self-acquisition, and was not, therefore, liable to be sold in execution of a decree against his father. Both the lower Courts found that Bhavu had been separate from his father for many years, and that the house had been his (Bhavu's) separate property. They accordingly rejected the plaintiff's claim and made a decree in Bhavu's favour. In appeal, however, the District Judge observed regarding Bhavu's blindness, although there was no issue on the point:—"There can be no doubt that Bhavu Padmanji is incurably blind; the unfortunate man has appeared in Court, and the appearance of both eyes, like two balls of curd, proves his condition. Consequently, Steele, page 61, is an authority that Bhavu could not be included in any inheritance. Stokes' Hindu Law, page 107, seems to exclude persons *born* blind, and this it does not appear Bhavu was. But both Steele and Stokes show a person incurably afflicted is personally excluded from inheritance. Nothing, therefore, can be more reasonable to believe than that Padmanji may have provided separately for his son Bhavu, or, if he did not do so, that the maternal grand-mother of Bhavu (Kashi) did provide for him."

The special appeal was argued before WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

Bhairavnath Mangesh for the special appellant.

Vishnu Ghanasham for the special respondent.

WESTROPP, C.J.:—This Court does not agree in the opinion of the District Judge that Hindus, though not born blind, are, if they become incurably blind, thereby rendered incapable of inheritance. See *Murarijí Gokaldas* v. *Parvatibai*[1] and *Anunta* v.

(1) I. L. R., 1 Bom. 177.

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Ramabái,[1] in which latter case the incurable diseases, which incapacitate for inheritance, are mentioned. But, inasmuch as he has found as facts, that Padmanji and Bhavu were separate in estate, and that the house in dispute was purchased for Bhavu as his absolute property with funds supplied for the purpose by Kashi, his maternal grand-mother, the Court affirms the District Judge's decree with costs.

[APPELLATE CIVIL JURISDICTION].

February 1.

HONAMMA (DEFENDANT AND APPELLANT) *v.* TIMANNABHAT AND ANOTHER (PLAINTIFFS AND RESPONDENTS).*

Act XXI. of 1850—*Hindu widow—Loss of caste—Incontinence—Forfeiture of rights or property—Starving maintenance.*

Since Act XXI. of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights or property.

A Hindu widow entitled to a bare or starving maintenance, under a decree made in a suit, brought by her for maintenance against the representatives of her deceased husband, is not to be deprived of the benefit of that decree by the fact that she has since its date been leading an incontinent life.

Rajah Pirthee Singh v. *Ranee Raj Kower* (20 Calc. W. R. 21 Civ. Rul.) distinguished.

THIS was a special appeal from the decision of G. M. Macpherson, District Judge at Kanara, reversing the decree of the Subordinate Judge of Honáwar.

The plaintiffs Timannabhat and Theshbhat brought this suit against Honamma, and alleged in the plaint that the defendant had obtained a decree against them for maintenance, but that she had forfeited her right thereto, as she had been leading an incontinent life since the date of that decree, and had in consequence been excommunicated by the caste. The defendant denied the charge of incontinence, and pleaded that she was entitled to the maintenance. The Subordinate Judge found on the evidence that the defendant had been guilty of incontinence, but held that she did not lose her right to maintenance on that account. In appeal, the District Judge reversed that decree, and decided that she forfeited her right to maintenance by reason of her incontinent life.

The special appeal was heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

(1) *Supra* p. 554.

* Special Appeal No. 277 of 1876.