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primary contract between the parties, as may well be deemed to have been the case in *Bichook Náth* v. *Rám Lochun*(1) and *Pava* v. *Govind* (2).

JARDINE, J.:—I concur in the general conclusion at the end of the learned judgment of the Chief Justice as an answer to the question which is propounded in general terms by the Division Bench. As one of the Judges who decided *Dullabhdás* v. *Lakshmandás*(3) and *Sájaji* v. *Maruti*(4) I wish to add that, in my opinion, this conclusion does not conflict with those decisions. In the latter case we observed:—"As laid down by the Privy Council in *Dimech* v. *Corlett*(5), the hinge on which the decision in every particular case turns, is the intention of the parties collected from the language they have used." In dealing with the authorities, the expressions of every Judge must be taken with reference to the case on which he decides—*Richardson* v. *Mellish*(6). I would further add my concurrence in the view expressed that the equitable jurisdiction to relieve against penalties is not taken away by Act XXVIII of 1855—*Pava* v. *Govind*(7), and I think it unnecessary to express a final opinion on the scope of section 74 of the Indian Contract Act, 1872.

Decree confirmed.

(1) 11 Beng. L. R., 135.
(2) 10 Bom. H. C. Rep., 382.
(3) I. L. R., 14 Bom., 200.
(4) I. L. R., 14 Bom., 274.
(5) 12 Moore P. C. C. at p. 229.
(6) 2 Bing., at p. 248.
(7) 10 Bom. H. C. Rep., 382.

APPELLATE CIVIL.

Before Mr Justice Jardine and Mr Justice Telang.

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GOJA'BA'I AND ANOTHER, (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHRIMANT SHA'HA'JIRA'O MA'LOJI RA'JE BHOSLE, (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Stridhan—Devolution of stridhan belonging to a childless widow—Grandson—Co-widow—Husband's nephew—Sapindas.

A childless Hindu widow died, possessed of *stridhan* consisting of ornaments given to her on her marriage and of a house purchased by her out of her own separate income. She left her surviving (1) a co-widow; (2) the plaintiff, who was grandson of another co-widow; and (3) a nephew (*i. e.* brother's son) of he husband. She had been married in one of the approved forms.

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Held, that the plaintiff was a nearer *sapinda* of the deceased than either her co-widow or her husband's nephew, and, as such excluded both from inheriting the deceased's *stridhan*.

APPEAL from the decree of L. J. Fernandez, First Class Subordinate Judge of Poona, in Suit No. 161 of 1888.

The plaintiff sued to recover certain property as heir of Ánandibái, widow of Sháháji Ráje Bhosle, Chief of Akalkot. The plaintiff was the grandson of a co-widow of Ánandibái.

The property consisted of ornaments given to Ánandibái on her marriage, and of a house purchased by her out of her own separate income.

Ánandibái died at Poona on the 19th April, 1888, leaving her surviving (1) a co-widow, Kamaljabái; (2) the plaintiff, who, as above stated, was the grandson of another co-widow; and (3) one Tulájiráv, who was her husband's nephew.

The defendants set up a deed of gift, as well as a will, purporting to have been passed by the deceased Ánandibái in their favour, and also contended that the plaintiff was not entitled to inherit the deceased's *stridhan* in preference to Kamaljabái or Tulájiráv.

The Subordinate Judge held that both the deed of gift and the will relied upon by the defendants were fabrications, and that the plaintiff was the heir of the deceased Ánandibái. He, therefore, decreed the plaintiff's claim.

Against this decision the defendants appealed to the High Court.

Vásudev G. Bhandárkár for the appellants:—The property in dispute was Ánandibái's *stridhan*. She having died childless, the question is, who is her heir? We contend that either her co-widow or her husband's nephew would be a nearer heir than the plaintiff, who is a grandson of another co-widow. The Mitákshara states in Chapter II, section xi, placitum 11, that the *stridhan* of a childless woman devolves first on the husband, and failing him, on *tat-pratyá-sannah*. This expression may mean either "her nearest relations," or his nearest relations. If we look to the context, it would have to be interpreted in the

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former sense. And this is the interpretation put upon the words by the Mayuka in Chapter IV, section x, placitum 28. The language of the Mitákshara being vague and ambiguous, the rule as laid down by the Mayuka, which follows the Mitákshara in this matter, should be adopted. According to the Mayuka, on failure of the husband a childless woman's *stridhan* passes to her nearest kinsmen in her husband's family. In Chapter IV, section x, placitum 30, the Mayuka states who are her nearest kinsmen. Reading placitum 30 with placitum 28, the rule to be deduced is that the heirs to the *stridhan* of a childless widow are, next to the husband, the kinsmen enumerated in placitum 30, who belong to the husband's family. According to this interpretation, Tulájiráv, who is the husband's nephew, is the heir to Anandibái's *stridhan*, and not the plaintiff. Even if the words *tat-pratyá-sannah* be taken to mean the husband's relations, they should be taken in the sense in which a commentator like Kamalákar has understood them, *viz.*, as referring to the heirs specified in the Mitákshara. See West and Bülher, p. 518. This appears to be a reasonable interpretation, as the author of the Mitákshara would not have used the vague words "husband's heirs," unless they were meant to refer to the well-known line of heirs which would make them definite. The Smrita Chandrika also gives a similar rule of succession in Chapter IX, section 3, placitum 38. According to this interpretation, Anandibái's co-widow would be the heir.

Latham, Advocate General (with him *Ghanáshám Nílkanth*) for the respondent :—The interpretation sought to be put on the Mitákshara is quite novel. The rule, as generally understood, is that, if a woman dies without issue, the heirs to her *stridhan* are the *sapindas* of the husband. A step-son precedes a co-widow—West and Bülher, 521; Mayne's Hindu Law, section 622; Bánarji's Tágore Law Lectures, pp. 375, 377. The plaintiff is, therefore, the heir to Anandibái's *stridhan*.

Vásudev G. Bhandárkar, in reply, cited *Bachha Jha* v. *Jagmon Jha*(1). In the present case the step-son predeceased Anandibái. The point is not covered by any authority.

(1) I. L. R., 12 Calc., 348.

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TELANG, J. :—The only point of law which arises in this case relates to the devolution of A'nandibái's property after her death. In the Court below, that property was dealt with as forming part of A'nandibái's *stridhan*, and it has been similarly dealt with in the argument before us. We must, therefore, treat it on the same footing. It must also be assumed, as in the absence of all evidence it was rightly assumed by the Subordinate Judge, that A'nandibái's marriage was in one of "the approved" forms(1).

Looking, then, at the case on this basis, the questions which arise for consideration are, first, whether the plaintiff, as grandson of Ánandibái's husband, has any right at all to Ánandibái's *stridhan*; and, secondly, whether, if he has such a right, that right is preferable to the right of A'nandibái's fellow-widow Kamaljabái or her husband's nephew Tulájiráv.

Now the general rule is that laid down in the Mitákshara, Chapter II, section xi, pl. 25: "on failure of grandson, also the husband and other relatives above mentioned are successors to the wealth" (2). The "other relatives" thus vaguely indicated here are more definitely described in placitum 11, where it is said that, "on failure of him, it goes to his nearest kinsmen *(sapindas)* allied by funeral oblations"(3). According to the rule as thus expressed, the points to be determined in this case are, whether the plaintiff is a *sapinda* of A'nandibái's husband, and, if so, whether he is a nearer *sapinda* than Kamaljabái or Tulájiráv. On both points there can be no doubt. The definition of *sapinda*, which must be taken to be the one applicable in this Presidency, clearly and in terms(4) includes a grandson, and indeed no definition of that term excludes him. And it is clear that a man's lineal descendants are nearer *sapindas* of his than any collateral relatives. Therefore, according to the doctrine of the Mitákshara, as expressed in the words extracted above, it follows that the plaintiff excludes Kamaljabái as well as Tulájiráv from inheriting the *stridhan* of A'nandibái.

(1) See West and Bühler (3rd Ed.), p. 521; and see, too, *Gangárám* v. *Bália*, P. J. for 1876, p. 31. (2) Stokes' Hindu Law Books, p. 464.

(3) Stokes Hindu Law, p. 461. I have retained Colebrooke's words here, but the rendering here given of '*sapindas*' is not correct for this Presidency. See *Lallubhái* v. *Mánkuvarbái*, I. L. R., 2 Bom., 423 *et seq.*; S. C. on appeal I. L. R., 5 Bom., 121. (4) See *Lallubhái* v. *Mánkuvarbái*, I. L. R., 2 Bom., 423.

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It was, however, argued that the true meaning of the Mitákshara in the passage above extracted must be taken to be different from what is expressed in Colebrooke's translation; and that when it is correctly interpreted, the Mitákshara is in favour, not of the husband's nearest kinsmen inheriting a woman's property, but the woman's nearest kinsmen in the husband's family doing so. And for this interpretation, reliance was placed on the passage in the Vyavahára Mayukha[1], dealing with this matter. Although, as will presently be seen, it is not quite necessary to decide this point in the case before us, I may say, seeing that it has been argued, that the inclination of my own opinion is in favour of Mr. V. G. Bhandárkar's contention. For, I think, our general principle should be to construe the Mitákshara and the Mayukha so as to harmonize with one another, wherever and so far as that is reasonably possible; *cf. Krishnáji Venkatesh* v. *Pánduraug*[2]. And on the point now under consideration, it is possible to harmonize them, if both the Mitákshara and Mayukha are understood to refer to the same heirs, only by different descriptions—the Mitákshara describing them as *sapindas* of the husband, the Mayukha as *sapindas* of the wife in the family of the husband. But, even accepting to the full Mr. Bhandárkar's contention on this point, and construing the Mitákshara in the sense which Nilakantha places upon its language[3], I do not see how we can properly arrive at a different conclusion from that above stated. The wife having, by her marriage, been "born again in the husband's family"[4], and having become "half the body of the husband",[5] the *sapindas* of the husband necessarily become her *sapindas*, and their degrees of propinquity to the husband and wife must be held

(1) See Stokes' Hindu Law, p. 105; Mandlik's Hindu Law, pp. 97-8.

(2) 12 Bom. H. C. Rep., p. 65.

(3) The Viramitrodaya adopts Vijnáneshwara's mode of describing the heirs. And see West and Bühler, p. 517, and notes. The Madana Parijata, p. 666 (Bibliotheca Indica Ed.), adopts the same mode as that of the Mayukha.

(4) *Cf. Sri Raghunadha* v. *Sri Brozo Kishoro*, L. R., 3 I A., 191 (S. C. I. L. R., 1 Mad., 81); *Lallubhái* v. *Cássibái*, I. L. R., 5 Bom., 121; and see Mr. Justice Bánarji's Tágore Lectures, p. 444, for a reference to a Smriti text on this point.

(5) I. L. R., 2 Bom., 423; *cf.* Bánarji's Tágore Lectures, p. 138. There appears to be some mistake there in the citation from Manu, but it is not material for present purposes.

to be identical[1], unless some specific reason to the contrary is shown. Now we have seen that the plaintiff is the nearest *sapinda* of Anandibái's husband, and the question, therefore, is whether any specific reason can be shown for holding him not to be the nearest *sapinda* of A'nandibái. It is said that one such reason is furnished by the text of Sumantu quoted in the late Ráo Sáheb Mandlik's Hindu Law[2]. It appears to me, however, that Mr. Bhandárkar's ingenious argument on this point clearly involves a fallacy. The text itself, it is to be first remembered, makes no reference to the *sapinda* relationship at all, and does not profess to modify the definition of it. It only enumerates certain relatives, and states that they are within the prohibited degrees for purposes of marriage. It is true, as Mr. Bhandárkar argued, that the definition of the term "*sapinda*," which has been applied in the rules regarding inheritance, is itself originally given in the section relating to marriage. But it does not, therefore, follow that a special rule about particular relations, which in terms refers to marriage only, but says nothing about *sapindas* generally, or the ground of the *sapinda* relationship, can be used to limit that definition of *sapindas* for all purposes whatever. In reference to the text in question, Mr. Mandlik has expressed an opinion, that "the preponderance of authority, at any rate on this side of India," is in favour of the view that "*sapinda* relationship in the case of the step-mother . . . . . extends only to those relatives through the step-mother who are specifically mentioned in the above text." For the purposes of the present case, it is quite unnecessary to examine the authorities relied on for this position. Assuming it to be correct, as I am inclined to think it is, it is plain that Mr. Mandlik himself did not intend it to apply to matters of inheritance, but only to marriage[3]. And when it is remembered that step-brothers[4], for instance, are not named in Sumantu's text, it is easy to perceive that that text cannot

(1) *Cf.* West and Bühler, p. 518; also I. L. R., 5 Bom., 121, and Bánarji' Lectures, p. 436.

(2) P. 352.

(3) See Mandlik's Hindu Law, pp. 346, 357, 389—91.

(4) As to whose rights of inheritance, see Stokes' Hindu Law Books, p. 415 and p. 89.

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be properly regarded as exhausting the *sapinda* relationship through a step-mother for purposes of inheritance. Again, it is laid down by Manu in a familiar text (Ch. IX, pl. 183[1]), that the son of a man by one of his wives is as a son to all his wives. Sumantu's own text, too, says that the wives of a man's father are all mothers; and they cannot all be his mothers, without his being the son of them all, and his son their grandson. And such being the true character of the relationship, it would plainly be impossible to give any affect to Mr. Bhandárkar's argument even if it were in itself of any validity. Further, we have the cases collected in West and Bühler at page 521 *et seq.*, showing that a step-son[2], a step-daughter-in-law, and a half-brother of the husband are included within the *sapinda* relationship. And in *Motirám* v. *Mayárám*[3] the son of the step-daughter of a widow was held to be the heir to such widow. Lastly, Mr. Bhandárkar's own argument proceeds upon the footing that the rival widow is a *sapinda*. It is impossible, then, to hold that a rival widow's grandson, being within the numerical limits of the *sapinda* relationship, is not also a *sapinda*. And upon the whole I am of opinion that the reasons for holding the rival wife's grandson to be a *sapinda* are so strong, that to hold otherwise would be to afford an illustration of a *dictum* attributed to Sir J. Colville, to the effect that a certain proposition may be absurd logic, but it may nevertheless be good Hindu law. I am bound to say that I entirely deny the justice of that *dictum* and what it implies. And I cannot sanction a doctrine to which, when coupled with other established rules, it will be fairly applicable.

This point has been so fully discussed, that the next argument urged on behalf of the defendants can be very briefly disposed of. It is said that the view of Kamalakar, the author of the Vivada Tandava, is unfavourable to the recognition of *sapinda* relationship between a woman and the grandson of her rival wife. And this argument is based on the absence of all mention of the son or grandson of the rival wife in the summary of

(1) See Manu by Bühler in Sacred Books of the East, p. 365, and note there, with which *cf.* West and Bühler, 522.

(2) In *Teencowree Chatterji* v. *Dinonáth Bánerji*, 3 Calc. W. R., 49, an opinion is expressed in favour of a step-son by adoption being entitled to a woman's *stridhan*.

(3) P. J. for 1880, p. 119.

Kamalakar's view as presented in West and Bühler's Digest[1]. The whole discussion there, however, shows, in my opinion, that this is not in accordance with the view of the authors of the Digest, who, it is to be remarked, subsequently include the step-son as an heir coming in according to the principles expounded by them. Nor is it the view of Dr. (now Mr. Justice) Gurudás Bánarji, as shown in the passage from his Tágore Lectures[2] to which the Advocate General drew our attention—a passage which is in substance, and in some parts almost in identical words, adopted by Mr. J. S. Siromani in his Commentary on Hindu Law[3]. And when we look at the Vivada Tandava itself, the reason of the omission on which Mr. Bhandárkar has founded his argument becomes quite clear. The author has dealt with the rights of the offspring of the rival wife, not under the exposition of the words 'husband's *sapindas*,' but in the earlier portion dealing with the woman's own offspring. He there actually cites the text of Manu, IX, 183, already quoted, and naturally, from that point of view, treats of the rival wife's children immediately after he has dealt with the rights of the woman's own offspring. And the author of the Madana Parijata[4], (who is also the author of the famous commentary on the Mitákshara named the Subodhini), treats the subject in the same manner[5].

The net result of the whole discussion, therefore, appears to be this that, assuming the true construction of the Mitákshara to be such as the Vyavahára Mayukha propounds, and assuming, consequently, that the nearest *sapindas* to whom the property of a childless woman should go, are the nearest *sapindas* not of the husband, but those of the woman herself, in the husband's family, there can still be no doubt that the grandson of a rival wife belongs to the class so designated; that, according to the views of some writers, he comes in next after the offspring of the woman herself, and before her husband; and that, according to the view of others, he would come in after the husband, but

(1) Pp. 517-8.

(2) Pp. 375—7; see also S. C. Sarkár's Vyavastha Chandrika, Vol. II, p. 521.

(3) P. 396.

(4) See about him Stokes' Hindu Law Books, p. 177; and Mandlik's Hindu Law Introduction, pp. lx, lxiv, lxvii, lxxii

(5) See p. 667 (Bibl. Ind. Ed.).

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before his other wives, and such other wives' daughters, and of course before other more distant heirs including the husband's brother's son. It was said, however, that as the inheritance goes to those nearest to the woman whose property is in question in her husband's family, we should not accept the order in which heirs succeed to the husband, because that order is not based on nearness of relationship, which is what nearness must be held to signify for the purpose of the rule under consideration. The arguments urged in support of this contention are those stated by West and Bühler, and are, in their opinion, outweighed by the argument derived from that "identity of the wife with her husband," which they justly call "a leading principle of the Mitákshara," and which may even be called a leading principle of the whole of the Hindu law. The opinion expressed by West and Bühler is concurred in by Dr. Bánarji[1] in his Tágore Lectures, and also by Mr. J. S. Siromani[2], and appears to me to be worthy of acceptance. And I may also add, that, even if we rejected the guidance afforded by the principle of the identity of husband and wife, it would, in my view, be difficult to justify any application of the principle of nearness of relationship which would make either the rival widow or the husband's brother's son a nearer relation than the husband's own son's son.

But Mr. Bhandárkar has raised a further point. He cites the text of Brihaspati[3], which is quoted in the Vyavahára Mayu-

(1) P. 377.

(2) Commentary on Hindu Law, p. 386; see also S. C. Sarkár's Vyavastha Chandrika, Vol. II, p. 522.

(3) See with regard to that text the notes at Stokes' Hindu Law Books, p. 106, and also Bánarji's Tágore Lectures, p. 433. That text also forms the subject of some remarks in the late Professor Goldstucker's paper on the deficiencies in the administration of Hindu Law (see Goldstucker's Remains, Vol. II, p. 157). The translation given by Professor Goldstucker, it will be noticed, does not agree with those given by Borradaile or Ráo Sáheb Mandlik. Probably, no doubt, Professor Goldstucker when translating the passage as quoted in the Daya Bhaga (see Stokes' Hindu Law Books, p. 257), would accept Jimuta Vahána's exposition of it, almost as a matter of course. The Viramitrodaya's interpretation, which agrees with Jimuta Vahána's, is referred to further on. That work emphatically declares that it "would be contrary to immemorial custom," if the sister's son and the rest were allowed to be heirs, although the son of a co-wife was living (p. 243); see also Burnell's Varadaraja, p. 51, and Vyavastha Chandrika, p. 539.

kha, and from that text asks the Court to draw the conclusion that the husband's brother's son takes precedence over the other relatives of the husband, and the relatives of the widow in the husband's family such as the plaintiff. It is, however, to be remarked that that text is nowhere cited in the Mitákshara, and the rule stated by Vijnaneshwara is not consistent with it. In truth, even the rule which Nilakantha himself deduces from Yajnavalkya's general text is not in harmony with the enumeration of heirs contained in the text of Brihaspati now under consideration. And yet the Mayukha does not say how the two are to be made to stand together. The learned authors of the Digest have placed the heirs enumerated by Brihaspati after the husband, and before the woman's *sapindas* in her husband's family. This certainly appears to be warranted by the express words of the Mayukha contained in placitum 30[1]. Yet it is not quite reconcileable with the previous declaration in placitum 28, that "if there be no husband, then the nearst to her in his family takes" the woman's property. It is quite plain that some of the persons referred to in Brihaspati's text do not answer to this description at all; while of those that do, the husband's brother's son is not obviously nearer than the husband's younger brother, and yet according to Brihaspati's text the former would stand before the latter. It cannot, therefore, be assumed to be *quite* clear, according to the view of the Mayukha[2], that Brihaspati's list states the true order of succession as between the heirs enumerated, or that all those heirs take precedence over the ones included under the designation "nearest to her in her husband's family." Mr. J. S. Siromani indeed, in his Commentary on Hindu Law, says (p. 389): "Taking all that the author says in the chapter into consideration, it seems that in the above list the relatives on the father's side succeed in the case of a woman married in the disapproved forms of marriage; and in the case of a woman married in any of the approved forms of marriage, the inheritance goes to the relatives

(1) Stokes, p. 106.

(2) Mr. Justice Bánarji rather inclines to the contrary opinion. He also points out (p. 386) that the Bengal lawyers consider the text merely as generally laying down the right to inherit, *not* the order of succession; (see, too, pp. 428—433).

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on the side of the husband in the above list." But he himself adds, that "this point again is not free from doubt." And, besides, it is to be remarked, that it is not easy to provide for the son-in-law, in a distribution made on the principle here indicated.

Mr. Bhandárkar in the course of his reply referred us to the case of *Bachha* v. *Jugmon*(1), in which the Court discusses some of the questions arising with reference to this text of Brihaspati. The Court there was "inclined to think that what the author perhaps meant to lay down was that the succession of the heirs mentioned in Brihaspati's text is to be taken subject to the rule of law laid down by him in accordance with the Mitákshara (see Shama Churn's Vyavastha Chandrika, Vol. II, pp. 537-8)." If so, the text fails to support Mr. Bhandárkar's argument. The judgment in a previous passage had said that "on a careful consideration of the Vyavahára Mayukha itself (Ch. IV, sec. 10, pl. 22—8), it seems to be doubtful whether the author really meant" the "succession to be regulated in the order in which the said heirs are enumerated" in Brihaspati's text. If that view is correct, and it seems to be identical with that which has just been set out from Mr. J. S. Sivomani's work, the result is nearly the same as it is on the construction of that text which prevails in the Bengal school as laid down by Dr. Bánarji (see Lectures, pp. 386, 428—433), and does not help the appellants before us. But Mr. Bhandárkar argued that the heirs specifically named in Brihaspati's text ought to be given precedence over those who come in under the general designation, each group of them taking precedence in the class (*viz.*, that of husband's kinsmen or parents' kinsmen) to which it belonged. There is, however, no authority for this view. In West and Bühler's Digest the precedence is given to the whole of the enumerated heirs, and the ground for such precedence has already been stated. If they are not treated as one class, there is apparently no other ground for the preference than is indicated by the principle mentioned in the Vyavahára Mayukha, Chapter IV, section VIII, placitum 18. But that principle as there expressed appears to be intended to apply only where there is a "compact

(1) I. L. R., 12 Calc., 355.

series." This Court in *Mohandás* v. *Krishnábai*[1] declined to apply it in the case of *bandhus*, so as to give to the *bandhus* expressly named a preference over those who come in under the general definition. I think this is the authority which would be more applicable in the matter before us, and no such preference of the designated persons can, therefore, be allowed in this case.

It is to be remarked also that the text under consideration, in order to be accurately applied, has to be restricted by limitations which are not stated in it. Nilakantha supplies one restriction, which may be accepted as implied in the provisions of the text itself. But when he, by adding another similar restriction, postpones these enumerated heirs to the husband and the parents, he has no warrant for so doing in what is expressed, or even in what is implied in that text. There is thus a good deal of difficulty in the practical application of the passage of the Mayukha which Mr. Bhandárkar has relied upon. A further point is suggested by the mode in which the Viramitrodaya deals with this text of Brihaspati. According to the interpretation there given, the grandson of the rival wife is actually specified as an heir in this very text. It is not necessary to examine the process by which this result is reached. The result itself, however, is thus clearly stated by Mitra Misra, after setting forth his exegetical gloss on Brihaspati's text. "Hence on failure of heirs down to the daughter's son, first the *aurasa* inherits, after him his sons and grandsons..... In their default, *the son of a rival wife, her son and grandson* (become heirs in their order); by reason of their being, under the circumstances, the givers of the *pinda* and the liquidators of the debts, by reason of the text of Manu cited above"[2]. It seems

(1) I. L. R., 5 Bom., 597.

(2) Mr. Justice Bánarji speaks of the "order of succession" in the Viramitrodaya and the Mayukha and Smriti Chandrika being the same (Tágore Lectures, p. 374), *sed quære*. The translator of the Smriti Chandrika (p. 135) refers to Brihaspati's text as translated at II Colebrooke's Digest, p. 621. That translation agrees in all important respects with the translation in Mr. Justice Bánarji's Lectures, pp. 373-4, and both are based on Mitra Misra's and other writers' interpretation of the text, not "on additions not borne out by the Sanskrit text" as Mr. Krishna Swámi Iyer supposed. As to the Smriti Chandrika itself, on which Mr. Bhandárkár relied, see Vyavastha Chandrika, pp. 541-2; and *Hurrosha Dace* v. *Gokoolanund Dass*, 1. L. R., 3 Calc., 594

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to me probable that Nilakantha did not understand the text in the same manner as Mitra Misra. But as he merely sets out the text without any gloss on its terms, it is not possible to give a very confident opinion on this point.

Besides the difficulties above glanced at, it is worthy of remark, that this particular passage in the Mayukha, and the text of Brihaspati on which it is based, do not, as far as I have been able to see, appear to have been anywhere relied upon in any of the *responsa prudentum* collected in West and Bühler's Digest[1]. The son-in-law who comes in under this passage, and who could hardly come in under the other rules, and whose case, therefore, would afford a crucial test on this point, has no place in the list of *sapindas* whose cases are enumerated in West and Bühler. But whatever may be the proper conclusion to be derived from a consideration of the various circumstances now dwelt upon, and whatever may be the rule which ought to be applied in cases where the Mayukha is the governing authority, it seems to me that in dealing with this case, coming from a district in which the Mitákshara is the paramount authority, we are not bound to apply this exceptional and anomalous rule of the Mayukha and more especially so because that rule forms part of a scheme of succession to *stridhan*, which in most important particulars is entirely different from the scheme of the Mitákshara. According to this latter scheme, as already shown, the plaintiff is a nearer *sapinda* of Anandibái and her husband than either Kamaljabái or Tulájiráv, and, therefore, the defendants cannot avail themselves of any *jus tertii* to resist the claim of the plaintiff to Anándibái's property. That claim has been properly allowed by the Subordinate Judge, and his decree must be confirmed with costs.

JARDINE, J.:—The question of Hindu law which was argued before us has been dealt with by my brother Telang in an exhaustive judgment in which I concur. I now proceed to give the decision of the Court on the questions of fact, of which two were argued. (His Lordship then discussed the facts of the case, which are not material to this report.)

(1) Cf. as to this *Lallubhai* v. *Mánkuvarbái*, I. L. R., 2 Bom., 419.