

over the household, nor must she embellish herself (to mix in society); she must not associate with her husband, nor shall her friends and relatives associate with her at meals; cohabitation with low persons, abortion (and) doing injury to the husband are acts in particular which, as well as others, positively cause degradation of women. The meaning of the term "*patita*" is explained by Gautama, "degradation," disqualification for the performance of the duties of the twice-born persons and deprivation of happiness in the next world, which (latter) according to some is damnation to hell. Duties of twice-born persons. The religious acts ordained in the Veda, *viz.*, the presentation of the sacrificial fire, &c., and the performance of the eight ceremonies ordained by the Smriti (1), and so forth, which cannot be done without the expiatory penance, and the acts subservient thereto (namely) the repetition of the name of a god a great many times and so forth. Twice-born persons are mentioned by reason of superiority. The degradation of Sudras and others (2) is also ordained in a different passage:—

"Mahabharata (3).—The chapter entitled Haribans, Volume IV, (Narada says to Arundhate) "O Arundhate (4) gifts, fastings, religious acts, and good acts of unchaste women are vain; their religious merits also, O spotless beauty, are fruitless. Those wicked women who by the commission of adultery deceive their husbands, lose for that time the fruits of religious acts, and are doomed to hell" (slokes 754 and 755).

I have not been able to find any decision on the point whether an unchaste widow can receive a son in adoption; but there are two as to the power of lepers to adopt, which throw much light on the subject. Lepers are deemed incompetent to perform religious observances, and incapable of inheriting because they are supposed to be polluted by crime committed in a former stage of existence. In Macnaghten's Hindu Law, Volume II, page 201, is a case, No. xx, in which it seems to have been decided that a person afflicted with leprosy

is incompetent to adopt a son. The following case, No. xxi, shows that if the leper has performed the prescribed penance, he may adopt, and in a note a passage from the digest of Jagannatha is referred to as follows: "Raghunandana holds that expiation for a man afflicted with elephantiasis or other similar disease is ordained for the purpose of enabling him to perform acts of religion ordained in a Veda. By parity of reasoning he becomes competent to inherit property as well as to perform religious ceremonies."

In a case before the Privy Council, *Ramalinga Pillai v. Sidasiva Pillai* (1), it seems to have been taken as admitted law that an adoption by a person while under pollution, in consequence of the recent death of a relation, would be invalid. On the whole, I am of opinion that Thakomani, as an unchaste widow, living in concubinage, and being in a state of pregnancy resulting from such concubinage, was incompetent to receive a son in adoption; and, therefore, on the question of law, as well as upon the facts, my judgment is adverse to the plaintiff. The suit will be dismissed in the terms I have already intimated.

Suit dismissed.

Attorney for Plaintiff: *Baboo Ashutosh Dhur.*

Attorney for Defendant: *Baboo M. C. Chatterjee.*

B. L. R. Vol. V, p. 380.

(Original Civil.)

The 23rd March 1870,

Before Mr. Justice Markby.

SRI MATI SARSAWATI DEBI and another,

versus

NABADWIP CHANDRA GOSAIN.

Redemption, Equity of—Sale in execution of Decree—Act VIII of 1859, s. 271.

Under Act VIII of 1859, an equity of redemption can be sold in execution of a decree.

In this case the plaintiffs obtained a decree against the defendant, on the 30th

(1) Smriti here means that part of the Hindu law which treats of religious acts and ceremonies.

(2) That is mixed classes.

(3) Published by the Asiatic Society of Bengal.

(4) The wife of the sage Vashishtha; she was famous for her virtues, and was transformed into a Star. See Colebrooke's Digest, Vol. II (London edition), p. 455.

(1) 9 Moore's I. A., 506.

January 1870, and sued out a prohibitory order restraining the defendant from alienating certain property in Calcutta. The property so attached was under mortgage to one Anand Lal Dass. Soon after the attachment, the plaintiffs' attorney, Baboo Jaya Krishna Gangooly, applied for the sale of the defendant's equity of redemption in the property. MARKBY, J., thought that after the decision of PHEAR, J., in *Brojanath Kundu Chowdry v. S. M. Govindmani Dasi* (1), he could not grant the order for sale as of course.

Mr. Woodroffe now renewed the application. In *Brojanath Kundu Chowdry v. S. M. Govindmani Dasi* (1), Mr. Justice Phear expressly guards himself from deciding whether or not the attachment Sections of Act VIII apply to an equity of redemption. It is said that Mr. Justice Norman, on one occasion, formally pronounced an opinion in the negative; but the case is not given, and it will probably appear that, in that case, the party issuing out execution was the mortgagee himself. It has been, no doubt, held here that a mortgagee, in executing a money decree against his mortgagor, cannot attach the equity of redemption; but this case is different. *Brojanath Kundu Chowdry v. S. M. Govindmani Dasi* (1) was also that of a mortgagee executing a money decree against his mortgagor. The proviso in Section 271 of Act VIII of 1859 says, "that, when any property is sold, subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale," clearly contemplating the sale of equities of redemption. If the Court were to hold that no creditor could sell an equity of redemption, there would be a great deal of fraud practised.

Markby, J.—I shall speak to Mr. Justice Phear, and give my decision to-morrow.

Markby, J.—I have consulted Mr. Justice Phear on the point raised by Mr. Woodroffe. He informs me that he did not intend to decide it in *Brojanath Kundu Chowdry v. S. M. Govindmani Dasi* (1). It appears to me that the order may be granted; but I must say that, if it had not been for the proviso in Section 271 of Act VIII of 1859, I should have had considerable difficulty in granting the application. As it is, the plaintiffs are entitled to their order, but

they must first of all put in an affidavit showing the value of the equity of redemption.

On a subsequent day, Mr. Bonnerjee applied to Mr. Justice Norman on affidavit showing the value of the property, and the order for sale was granted.

Application granted.

Attorneys for Plaintiffs: Messrs. Judge and Gangooly.

B. L. R. Vol. V, p. 382.

(Original Civil.)

The 5th April 1870.

Before Mr. Justice Markby.

ABBOTT v. ABBOTT AND CRUMP.

Execution—Attachment—Partnership—
Property—Act VIII of 1859, s. 205.

A decree-holder, who was also a partner of the judgment-debtor, sought to attach, in execution of his decree, the share of the judgment-debtor in the assets of the partnership business, the business then being in the hands of the Receiver of the Court under a decree for dissolution and winding up. *Held*, that such share of the judgment-debtor was not property within the meaning of Section 205 of Act VIII of 1859, and therefore not liable to attachment in execution.

THIS was an application for execution against the co-respondent, W. H. Crump, for non payment of the costs adjudged to the petitioner. The application was for "attachment of the co-respondent's right, title, and interest in a two-thirds share in the assets of the business lately carried on by the co-respondent, &c."

Mr. Marindin, in support of the application, referred to Sections 201, 205, and 212 of Act VIII of 1859, and to Section 15, Act XXIII of 1861. He also cited *In the matter of Wait* (1), *Holmes v. Mentze* (2), *Davis v. Middleton* (3), and *Rajkumar Roy v. Kadambini Debi* (4).

(1) 1 T. & W., 609.

(2) 3 A. & E., 127.

(3) 8 W. R., 282.

(4) 4 B. L. R., F. B., 175.

(1) 4 B. L. R., O. C., 83. See *Aubin v. Ahmed Mahomed*, 1 I. J., N. S., 241.