

CHAPTER IV.

Of Appeals and other Matters.

SECTION 1.

1. Although a judicial proceeding may have been decided, it may in some instances be carried farther while the litigant parties are alive; but in others, the decision is final.

Some cases -
appealable,
others not.

2. With a view to elucidate this rule, the relative consequence of judicial tribunals; assemblies of townsmen [*puga*], and companies of traders [*Sreni*], is next propounded. "Persons specially appointed by the ruler: assemblies of townsmen: companies of traders, and families: these are classed according to their relative consequence, in the investigation of the affairs of men."*

Relative rank
of tribunals
propounded.

3. "*Persons specially appointed by the ruler:*" those expressly nominated by the ruler or king to investigate judicial proceedings, such as are described in the following and other texts: "Persons who are versed in literature, should be appointed assessors of the court,"† &c. *Assemblies of townsmen:* of people of various tribes and various professions sitting in one place, as of villagers or citizens. *Companies of traders:* assemblages of persons of similar or various tribes exercising the same livelihood, as horse-dealers, pawn-sellers, weavers, and shoemakers. *Families:* assemblages of cognate relatives, connexions, and kinsmen.

Exposition of
the text.

4. It must be understood, that of these four tribunals, "persons specially appointed by the ruler" and the rest, the first in the order of reading is the most considerable or important. "*Of men:*" of litigants. "*In the investigation of affairs:*" in the administration of justice. This is an

An appeal
may be preferred
from the
decision of a
family up-
wards to per-
sons specially
appointed by
the ruler.

* *Veeramitrodaya* and *Smritisāra*.

† *Vide supra*, Chap. i, Sec. 1, § 10.

established rule. A judicial proceeding having been decided by persons specially appointed by the ruler, if there be dissatisfaction on the part of the litigant fancying himself aggrieved, an appeal cannot be preferred from them to an assembly of townsmen : nor, having been decided by an assembly of townsmen, to a company of traders : nor, having been decided by a company of traders, to a family : but having been decided by a family, an appeal may be preferred to a company of traders, to an assembly of townsmen, and to persons specially appointed by the king.

An appeal may be preferred to the king.

If affirmed, appellant to be amerced; if reversed, judicial authorities to be amerced.

5. It has been declared by *Nāreda*, that after a case has been decided by persons specially appointed by the king, an appeal may be preferred to the king himself, in the following text : “ Families : companies : assemblies : persons specially appointed : the king : these are the tribunals for judicial proceedings, and their relative consequence is in their consecutive order.” A case on which a wager has been laid on the result, having been appealed to the king, and having been decided by him in council, and in presence of the authorities who tried the case, the unreasonable appellant must be amerced, if he is cast ; but if he succeeds, the constituted judicial authorities must be amerced.

Decisions liable to reversal.

6. It has been stated, that after decision by the inferior tribunals; a case may be carried farther, and that the decrees of the superior courts are not appealable. Next is propounded an instance, in which the decrees of all authorities are liable to reversal : “ He shall reverse cases decided by compulsion, by fear, by women, at night, in the inside of a house, abroad, and those brought forward by enemies.”* He shall reverse cases decided or terminated by compulsion, or violence, by fear or terror ; so also cases decided by women, at night, or in the night time, though not by females ; in the inside of a house, or in the interior of a dwelling ; abroad or outside of the town ; and cases decided by enemies.

What suits are invalid.

7. Moreover, “ A suit adduced by one intoxicated, or

* *Veeramitrodaya, Subodhini, &c.*

deranged, or diseased, or distressed, or a minor, or terrified, or uninterested, &c., is not valid.* “*Intoxicated*,” with spirituous liquors. “*Deranged* :” disordered in any of the five modes by a prevalence of wind, or of bile, or of phlegm, or under a morbid state of the three humours, or under planetary influence. “*Diseased* :” by sickness. “*Distressed* :” distress engendered by the privation of ease and the acquisition of pain. “*A minor* :” one incompetent, through nonage, to the transaction of his affairs. “*Terrified* :” by enemies. “*Uninterested* :” from having no connexion with the matter at issue. The use of the term “&c.” signifies a suit adduced in opposition to usages,† of the town or the realm and the like. It has been established by those versed in judicial proceedings, that the suit of one will not be attended to, when it is in opposition to the usages of the town or realm, as appears from the text: “That act which is in opposition to the usages of a town or realm, and that act which has been prohibited by the ruling power, have no validity;‡ and this rule must also be understood relatively to the act of him who has no delegated or natural interest in the suit.

8. But the text, “In a dispute between tutor and pupil, father and son, husband and wife, master and slave, a judicial proceeding cannot be entertained,”§ is not intended to exclude them altogether from legal redress, because even between them judicial proceedings are allowable.

Certain suits improper between what parties.

9. Moreover, “A pupil must be corrected without chastisement; but if this be impracticable, recourse must be had to slender rods composed of strings or cane, and the king will punish one using other instruments than these.”|| This is a text of *Goutama*: “by no means on the head, as declared by *Menu*.” From which rules it appears, that if a tutor, impelled by anger, strikes violently, or on the head;

A pupil may have redress against his tutor in certain cases.

* *Veeramitrodaya, Subodhini, &c.*

† *Ibid.*

‡ *Ibid.*

§ *Ibid.*

|| *Ibid.*

and if the pupil thus treated in an illegal manner, should represent his grievance to the king, a judicial proceeding will be entertained in this case.

And a son
against his fa-
ther.

10. "The ownership of father and son is the same in land which was acquired by his father,"* &c. From this text it appears, that in the case of land acquired by the grandfather, the ownership of father and son is equal: and therefore, if the father make away with the immoveable property so acquired by the grandfather, and if the son have recourse to a court of justice, a judicial proceeding will be entertained between the father and the son.

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If a wife
appears
against her
verdict.
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to

11. "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint." From this text it appears, that if, under other circumstances, the husband make away with his wife's property, and being required to refund, and having assets refuse to do so, then a judicial proceeding may be entertained between husband and wife.

d a slave
inst his
ster.

12. On the subject of a hired servant, the cases will be propounded in which judicial proceedings may be entertained between him and his master. "Whichever of these may rescue his master from imminent danger, shall be emancipated, and shall receive a son's share of the inheritance." From this text it appears, that there is no bar to the institution of a judicial proceeding by a slave against his master, refusing him emancipation and a share of the inheritance.

All such suits
admissible,
though not
creditable.

13. The import of the text, therefore, "In a dispute between master and pupil," &c. is, that pupils and the like preferring an action, should be advised by the king in court, that such proceedings are not creditable, either really or apparently. But if the pupils or other similar suitors are inflexible, the case must be proceeded on according to the regular form.

* *Yājñyavalkya*, cited in the *Dāyabhāga*, *Dāyatatva*, *Dāyacrama-sangraha*, *Vivādātandava*, *Vivādārnnavasetu*, *Vivādabhangārnava* &c.

14. Notwithstanding the following text of *Náreda*, "The suit of one against many, of women, and of a servant, is to be rejected: this has been declared by high legal authorities," still a judicial proceeding of one with many on account of the same matter may be entertained, as appears from the following and other text: "He who usurps the property of many, he who breaks an engagement formed [with many,]" and "him who has been assaulted by many," &c. The meaning must be, that a judicial proceeding cannot be entertained between one and many, on account of divers different matters at the same time.

Interpretation of a text of *Náreda*.

15. Women* also who are independent, such as milk-women and wives of vintners, may institute judicial proceedings. The exception refers to respectable married women whose husbands are alive. From their coverture they cannot sue independently.

Certain married women may sue.

16. The exclusion† of a servant from suing, has reference also to his dependant state, but is not intended to exclude him from instituting a judicial proceeding relative to his own peculiar interests by permission of his master. This is the proper construction.

Servants may sue for their own rights.

* A married woman carrying on trade openly for her own account distinct and separate from the traffic of her husband may, under the French institutions, bind herself by obligations relative to her trade without the sanction and authority of her husband, and subject herself to a personal decree.—*Colebrooke on Obligations and Contracts*, Part i, p. 233.

† In the Hindu law, as in the Roman jurisprudence, a slave has in general no property exclusively his own, and his contracts are imperfect by reason of his dependance on the will and control of a master. But by his master's indulgence he may have separate and peculiar property, over which he has full power.—*Ibid*.