not decisions upon the Mitakshara as applicable to the Carnatic. But if there be any ground for making such a distinction, it would be favourable to the restriction of Katama's interest in her father's property. For there are two commentaries which are received as authority in the Carnatic, the Smriti Chandrika and Dayabibhaga by Madhavya, neither of which follow the cited passage of the Mitakshara in assigning to a woman as her *Stridhan* property inherited by her. Their Lordships think then that the Judges of the Courts below were quite right in holding that Katama's interest ceased with her life, and that on her death the root of title is to be sought not in herself but in her father" (*a*).

Privy Council holds the same view as regards the Madras school.

In Devkuvarbai's case the Supreme Court of Bombay in 1859, after consideration of all the accessible authorities, and after consulting the shastris both in Poona and in the Sudder Adalat of Bombay held that daughters in Western India taking by inheritance take the estate absolutely (*b*). In the case of Vinayek *vs.* Laksmibai (*c*) Sausse, C. J., of the Supreme Court said that the sisters take the estate absolutely. But the reasoning, by which sisters are

Early decisions in Bombay with regard to the daughter's estate.

(*a*) I. L. R. 3 Mad., 290. (P. C.)

(*b*) 1 Bom. H. C. Rep O. C. J. p. 130.

(*c*) 1 Bom. H. C. Rep., 128.

given an absolute estate, is that their right is like that of the daughters. The Judicial Committee of the Privy Council in affirming the judgment of the Chief Justice adopt his reasoning and thus give their implied assent to the proposition that daughters take a complete estate by inheritance. Both the Supreme Court and Privy Council measure the *quantum* of the estate of the sisters in no other way than by reference to that of the daughter. This was the uniform doctrine of the Bombay High Court till the decision of the Privy Council in the Madras case, Muttu Vadu *vs.* Dorasinga Tevar. Messrs. West and Buhler are of opinion that the effect of this decision of the Privy Council is that "the heritage taken by daughter must in future be regarded as but a life-interest whether with or without the extensions recognised in the case of the widow, except in cases governed by the Vyavahara Mayukha" (*a*). In one case the Bombay High Court seems to have adopted this opinion of the learned authors of the Digest (*b*). The question was referred to a Full Bench and Mr. Justice West after an elaborate examina-

(*a*) West and Buhler's Digest of Hindu Law. 3rd. Ed. 432.

(*b*) Dalpat vs Bhagwan, I. L. R. 9, Bom., 301.

tion of the authorities came to the conclusion that under the Hindu law as prevailing in the Presidency of Bombay, a daughter inheriting from a father or mother takes an absolute estate, which passes on her death to her own heirs, and not to those of the preceding full owner. Mr. Justice West said that it may be inconvenient that the Mitakshara should be received in different senses in different parts of India ; but it is the acceptance and the acceptation, which for each part constitute its law *(a)*.

In Bombay daughters take absolutely.

In Bombay sisters take an absolute estate. In the case of Devkuvarbai, daughters were held by the Supreme Court of Bombay to inherit as full and complete an estate as a male and the rule as to daughters was by analogy extended by both the Supreme Court and the Privy Council, to sisters. In the case of Vinayek *vs* Laksmibai, *(b)* the Judicial Committee say "that as against male cousins, the sisters are the heirs of the brother. The consequence is that the entire interest in the property must be viewed as vested in the widow (*i.e.* the mother of the deceased) and her daughters (*i.e.* the

Nature of estate taken by sister.

Vinayek v. Laksmibai.

(a) Bhagirathibai vs Kahnujirav, I. L. R. 11 Bom., 285. (1886) ; Jankibai vs Sundra, I. L. R. 14 Bom., 612 (1890) ; Gulappa vs Tayawa, I. L. R. 31 Bom., 453. (1907).

(b) 9 M. I. A. 520.

deceased's sisters) or some or one of them and that therefore the appellants here, the sons of the brother of the testator, (cousins of the deceased son *i.e.* the propositus) are suing in a matter in which they have not the slightest interest, nor with which they have any concern". The question raised by the pleadings was: In whom is the absolute interest in the property now vested? Sausse C. J., determined that if the mother took less than the absolute interest, the sister, at any rate, took absolutely *i.e.* without any ulterior right of other persons to be satisfied out of the property. He contrasts the absolute with the life estate. "As to the mode in which sisters take," said the Chief Justice, "it would appear by analogy that they take as daughters." In affirming this judgment of the Supreme Court, the Privy Council declared that the cousins had no interest at all and in so doing recognised implicitly the right of the sister to take an absolute estate by inheritance.

Widow entitled to usufructuary enjoyment of property.

It is beyond doubt that a widow has an estate vested in her for life, (*a*) and is entitled to the absolute usufructuary enjoyment of the whole of such property (*b*). As we have seen

(*a*) Raja of Shivagunga vs Katama Natchiar, 9 M. I. A., 604.

(*b*) Kamavadhani vs Joysa, 3 M. H. C. R. 116.

already, the injunctions of the Hindu *shastras*, which enjoin on the widow the duty of strict frugality in her expenditure for worldly purposes, and which limit her rights as regards her own expenditure to the simple enjoyment during life, of a moderate amount of the husband's property for plain clothing and maintenance, are regarded as religious or moral precepts having no legal force whatever. It is true that Mr. Justice Dwarkanath Mitter said in the case of Kery Kolitany *vs* Moneeram(*a*) that the widow took the inheritance in trust, as it were, for the spiritual welfare of her husband, and that accordingly so far as her own personal expenses were concerned, her control over the income derived therefrom, was limited to such abstemious use as befitted the ascetic life to be led by her in her bereaved condition, the *corpus*, as well as the unspent income, without reference to the form in which the latter stood saved, constituting but one inheritance which on her death, reverted to her husband's heirs. But the Judicial Committee has rejected this "fanciful analogy of trusteeship" in appeal from that decision, and the view of Mr. Justice Mitter is now completely abandoned. Nevertheless it would seem that the spirit of that doctrine has not

Limits in Shastras to the personal expenditure of the widow are moral injunctions and have no legal force.

Mr. Justice Dwarkanath Mitter's view discussed.

(*a*) 13. B. L. R. 1.

altogether ceased to exercise a subtle and unconscious influence on judicial opinion with reference to some of the matters connected with the widow's income and we accordingly find that although the widow is free to spend or give away the whole of the income derived from her husband's property, yet where she does not do so and accumulates some portion of the said income, a question arises whether she loses control over the unexpended portion or she is as free to deal with it as with the current income. This question is not altogether free from difficulty. The same texts of Katyayana, Narada and the Mahabharata, which were utilized by the Dayabhaga for supporting the view that the widows took a restricted estate in inherited property were relied on by the Bengal Pundits in an early case to curtail her rights over the income derived from such property. In a case set out at page 64 of Babu Shama Charan Sarkar's Vyavastha Darpana, the reply of the Pundits states that a widow is not at liberty to make a will affecting the landed and other property left by her husband into the possession of which she came on his death, nor affecting the profits of it, nor affecting her own acquisitions made by means of landed property to which she had succeeded or by means of its profits. The texts of Narada on which

Widow's power as regards accumulations.

the Pundits relied were all texts declaring the dependence of women in the disposal of her husband's property. They did not suggest any restriction on her right to the income derived therefrom. From the text of Katyayana: "a gift, pledge or sale of lands, houses or slaves, by a dependent person is invalid or ineffici nt" the Pundits seemed to draw the infere ce that a widow, being a dependent person, any g alienation made by her is invalid. But in doing so, they failed to seize the distinction between the want of independence and want of ownership—a distinction recognized both in the Mitakshara (Ch II, Sec 1, 25) and the Dayabhaga (Ch I. Paras 15-17). The absolute right of the widow to the usufruct from her husband's estate being admitted, *primafacie* she ought to be able to spend the income or to alienate property purchased with such usufruct. In any event, according to the doctrine of *factum valet* enunciated by the author of the Dayabhaga her alienation of property derived from the income from her husband's estate ought not to be regarded as invalid in law.

Distinction between want of independence and want of ownership recognized in Mitakshara and Dayabhaga.

The earliest case in which the extent of the widow's right in accumulations was in question is the case of Soorjeemonee Dassee *vs* Dinobundhoo Mullick (*a*). It was decided

Judical decisions.

Soorjeemonee Dassee vs Dinobundhoo Mullick, 9 M. I. A. 123.

(*a*) 9. M. I. A., 123. See the case of Horry Dass

by the Privy Council in the year 1862. The facts of this case, so far as are necessary for our present purposes, are these :—A Hindu testator's estate was under administration, and there was dispute as to the interest taken by some of the parties. One of them died during the litigation, leaving a widow. He was ultimately declared to be entitled to an absolute interest in a share of the property, and the question then arose, how the income which had accrued from his share should be disposed of. The Supreme Court held that both the income which accrued during his life and that which accrued after his death should be held to be of the same character. On appeal that decree was varied, and it was declared, that so far, as regarded the accumulations after the death of the legatee, his widow was entitled to them absolutely in her own right. The next case on the subject is that of Chundrabulee *vs* Brody (*a*) decided by the High Court at Calcutta in the year 1862. In giving judgment in this case Mr. Justice Glover said "no amount of accumulations which a Hindu widow

Chundrabulee vs Brody, 9 W. R. 584.

Dutt vs Rungunmoney Dassee (Selvestre 657) which is earlier still in which the question did not directly arise but where there are certain observations against the widow's right to accumulations.

(*a*) 9 W. R., 584.

may leave behind her at the time of her death can be considered as belonging to her, but that they must go to swell the estate. But it was never contemplated that she should expend the produce of her estate wastefully, or do more than support herself in a decent and proper manner ; and that she should leave to her own relatives, or convert into her own *streedhun*, the accumulations she might have made, appears to me opposed to every principle of Hindu law as applied to widows".

Grose vs Omritomoyee 12 W. R. A. O. J. p. 13.

In the case of Grose *vs.* Omirtomoyee (*a*) which was decided in the year 1869, a similar question arose. Mr. Justice Macpherson, in giving judgment said : "According to all the older authorities on Hindu law, accumulations should be treated in the same way as *corpus* ; and I think they should be so treated now in the absence of any distinct authority to the contrary". We are not however told what these old authorities are. This decision seems to be inconsistent with the decision of the Privy Council in Surjomonee s case.

Gonda Koer vs Koer Oodey Singh. 14 B. L. R. 159.

In the case of Gonda Koer *vs* Koer Oodey Singh (*b*) in 1874 the question arose before the Privy Council whether immove-

(*a*) 12 W. R. A. O. J. p. 13.

(*b*) 14 B. L. R. 159 (1874.)

able property purchased by a Hindu widow with the profits of her husband's estate, formed an increment to that estate. The counsel for the appellants contended that they did not form part of the husband's estate but belonged to the widow absolutely and were at her absolute disposal, either by gift in her life-time, or by will. Soorjemony's case was cited in support of this contention. In reply to this contention their Lordships remarked, "Although the decree in that case, as so altered, made a distinction between the principal funds to which the widow was entitled as heiress of her husband, and the accumulations of income which had arisen therefrom since his death, and, in terms, treated her right to the latter as absolute and unqualified, it is nevertheless to be observed that there were no questions in that case as to any conflicting rights between her heirs and the reversionary heirs of her husband. The case, moreover, was governed by the law of Bengal, and the accumulations of income, to which the widow was declared absolutely entitled, were the produce of a reserve fund. Their Lordships cannot, therefore, regard this case as a conclusive, or even a direct authority upon the questions raised in this appeal". Their Lordships negatived the contention of the appellants that the widow,

who always maintained the validity of holding her son's adoption as heir to her deceased husband, and treated him as entitled to succeed to her deceased husband's property must be presumed to have intended to make her purchases as accretions to the property. Their Lordships, however, kept the question open as to what might have been the effect of a distinct intention on her part to appropriate to herself, and to sever from the bulk of the estate, such purchases as she made with her husband's property.

Judicial decisions on the widow's right over accumulations.

In 1875, in the case of Bholanath *vs* Bhagabati (*a*) their Lordships made certain observations unfavourable to the rights of the widow over accumulations. In giving judgment their Lordships said :—"If she took the estate only of a Hindu widow, one consequence no doubt would be that she would be unable to alienate the profits, or that at all events whatever she purchased out of them would be an increment to her husband's estate". These observations, it must be remarked, were extrajudicial. In 1876 in the case of Puddomonee *vs* Dwarkanath (*b*), McDonell and Jackson JJ. following broadly the principles laid down in Soorjomonee's case, observed : "a Hindu widow, having purchased land with the money de-

Bholanath v. Bhagabati

Puddomonee v. Dwarknath

(*a*) L. R. 2. I. A. 255. (*b*) 25 W. R. 335.

rived from the income of her husband's estates is competent afterwards to alienate her right and interest in whole or in part, to reconvert the land into money, and to spend it if she chooses." This decision was clearly favourable to the widow's right in accumulations.

Isri Dutt Koer v. Hansbatti.

The whole subject was examined in 1883 by their Lordships of the Judicial Committee in the leading case of Isri Dutt Koer *vs* Hansbatti (*a*). The case of Soorjomoni Dasi was again cited before their Lordships and referring to that case their Lordships said: "the widow had not saved the income in question; she had never had the option of saving or spending it; and all that was done was to recognize her right to the full usufruct and control over it." After reviewing the other decided cases their Lordships came to the conclusion that a widow's savings from the income of her limited estate are not her *stridhan*; and if she made no attempt to dispose of them in her life time there can be no doubt that they follow the estate from which they arose. Their Lordships pointed out the difficulty in fixing the line which separates accretions to the husband's estate from the income held in suspense in the widow's hands, as to

(*a*) I. L. R. 10 Cal. 324. (P. C).

which she has not determined, whether or not she will spend it. Towards the conclusion of their judgment their Lordships say: "These are circumstances which, in their Lordships' opinion, clearly establish accretion to the original estate, and make the after-purchases inalienable by the widow for any purpose which would not justify alienation of the original estate." From this it is apparent that their Lordships rested their decision on the *intention* on the part of the widow that the subsequent purchases made by her should form part of the original estate—an intention which could be inferred from the circumstances of the case. The principle of this decision was reaffirmed by the Judicial Committee in the case of Sheolochun Singh *vs* Saheb Singh which decided that when a widow, not spending the income of her widow's estate in the property which belonged to her husband when living, has invested such savings in property held by her without making any distinction between the original estate and the after-purchases, the *prima-facie* presumption is that it has been her intention to keep the estate one and entire, and that the after-purchases are an increment to the original estate (*a*). But there is no room for any

Sheolochun v. Saheb Singh.

(*a*) I. L. R. 14 Cal, 387.

such presumption where the *corpus* of the estate never came to the widow but was taken by an executor under a will. This was laid down in the case of Saodamini Dasi *vs.* Administrator—General of Bengal *(a)* the latest decision of the Privy Council on the subject. The facts were these: The executor of the will of a Hindu testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her husband's death, undisposed of by his will. The money was not received by her as a capitalized part of the inheritance, but as income that had been accumulated during her tenure of her widow's estate. The widow did not act showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years she disposed of it as her own. The Judicial Committee decided that the money so invested by the widow belonged to her as income derived from her widow's estate and was subject to her disposition. The main fact which distinguishes this case from the two earlier cases before the Judicial Committee consisted in this that here "there was

Saodamini v. Administrator-General of Bengal.

(a) L. R. 20. I. A. 12; *s. c.* I. L. R. 20 Cal, 433.

no estate of her husband in the widow's hand for her to augment". The circumstance that the widow placed the fund received from the executor in investment of a permanent nature was considered immaterial. The leaning of the Madras High Court in recent years has been to regard the remarks of the Judicial Committee in Isri Dutt's case (concerning the presumption that the widow must *primafacie* be taken to have intended to treat the accumulations as part of her husband's estate) as an *obiter dictum* (*a*). A Hindu widow inherited certain property from her husband and with the income thereof acquired land on usufructuary mortgage for 52 years. She assigned the unexpired portion of the term of the mortgage for consideration and subsequently died. The reversionary heirs to her husband then sued her asssignees for the property. There was no evidence that the widow had ever indicated an intention to make the property part of her husband's estate for the benefit of his heirs. The Madras High Court, in these circumstances, upheld the title of the assignees of the widow and made the following observations which are very pertinent to the subject under discussion (*b*). "The acquirer

Madras decisions on the widow's right over accumulations.

(*a*) Subramanian vs Arunachelam. I. L. R. 28 Mad, 1 (5.)

(*b*) Akkanna vs Venkayya. I. L R. 25 Mad. 351 (1901.)

of property", say the learned judges of the Madras High Court, "presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was absolutely at her disposal. In the case of property inherited from the husband, it is not by reason of the limited nature of the widow's estate under the Hindu law that she has only a limited power of disposition. But her absolute power of disposition over the income derived from such limited estate being now fully recognized, it is only reasonable that, in the absence of an indication of her intention to the contrary, she must be presumed to retain the same control over the investment of such income. The mere fact that properties thus acquired by her are managed and enjoyed by her without any distinction, along with properties inherited from her husband, can in no way affect the presumption. She is the sole and separate owner of two sets of properties so long as she enjoys the same, and is absolutely entitled to the income derived from both sets of properties. She can not but enjoy both sets of properties alike". It seems to us that these observations are in

conflict with some of the remarks made in the case of Isri Dutt. The presumption, according to this decision, is that the widow wants to retain control over the investment of the income, even though the investment might have been made in funds of a permanent character. In this case, however, the property obtained by the savings from the income was alienated during the lifetime of the widow. In a later case the same High Court enunciated the principle upon which it would act in cases dealing with the right of widows over accumulations. After stating that *dicta* are to be found in the decisions of the Bengal Courts or those following them to the effect that until the contrary is shown, savings or purchases with savings, effected by a widow should presumably be treated as increments to the *corpus* of the husband's estate and to pass together with it, Sir Subrahmania Aiyar, officiating Chief Justice, proceeded to say : "It is impossible to see how, consistently with the present state of the law, which in truth completely dissociates the income from the *corpus* in such cases, the presumption referred to could be supported Now that it has definitively been established that the widow is entitled to use her entire net income at her pleasure or give away the whole or any part thereof

Comment on the Madras decision.

as she chooses *inter vivos* or by testament, and that, with reference to the exercise of such right it is immaterial whether the income is formed into a fund or kept invested in this or that form, how could it be supposed that *prima facie* it merges in the estate merely because she has not actually disposed of it."

"The true foundation of a presumption is either some policy or general conformity with fact (compare Thayer's, 'Preliminary Treatise on Evidence', page 314), but neither of these can possibly be invoked in favour of that supposition. For it cannot be said that the merging of the unalienated portion of the income of a widow with the estate out of which she derived it, is required by any policy with reference to the community concerned. As to conformity with fact, who can doubt that if the wishes and intentions of widows in the class of cases under consideration have any relevancy in the matter they would in ninetynine out of a hundred cases be found to be against a merger ; such persons being of course naturally desirous that the income and the acquisitions made therewith should, to the last, remain within their power and pass on their death to their own heirs, especially the issue of their body. Nor could it be supposed that, as a matter of abstract reasoning, there

is any necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. In the absence of any clear provision of Hindu law, defining the character of her interest in the income, it must, on general grounds, be held that what becomes vested in her inher own right and what she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate in every sense and devolving as such.

"Should the precise question which has been just discussed arise for determination in this Court, this would be the conclusion to be arrived at on principle." The learned Chief Justice further said : "As to the *obiter dictum* in Isridutt Koer *vs.* Mussumut Hansbutti Koerain, (*a*) on which much stress was laid in the argument on behalf of the defendants, that is more than counterbalanced by the actual decision of their Lordships in the much later case of Saodamini *vs.* the Administrator-General of Bengal" (*b*). In these observations of the Chief Justice his colleagues Benson and Russel JJ. concurred (*c*). But

Comment of the Madras High Court on Isridut's Case.

(*a*) L. R., 10 I. A., 150. (*b*) L. R., 20 I. A., 12.

(*c*) Subramanian *vs.* Arunachelam. I. L. R., 28 Mad, 1.

it has been held that "where a female having the limited interest of a daughter or widow in an estate, spends the income which is her absolute property in the erection of buildings on lands belonging to the estate, it must be presumed that she intended the buildings to be an accretion to the estate and to devolve, as such, on the persons who would be entitled to succeed to the estate" (*a*).

Rivett-Carnac vs. Jivibai.

In the case of Rivett-Carnac. *vs.* Jivibai (*b*), Sargent. C. J. said that the decision in Isri Dutt's case left open the question as to what constitutes savings or accumulations, and seemed to suggest that all unexpended income at the death of the widow was not "savings" within the rule laid down by the Judicial Committee in Isri Dutt's case. The Chief Justice concluded his judgment in this case thus : "The cash balance in question does not amount to more than half the yearly income, and had not been separated from the general account so as to form a distinct fund which could be regarded as 'savings'. There is further an entire *absence of any outward sign of an intention to accumulate ;* whilst on the contrary the existence of debts rebuts any such intention, and points to the conclusion that

Isri Dutt's case leaves open the question as to what constitutes accumulations.

(*a*) Raja Venkata *vs* Raja Surenani. I. L. R. 31 Mad, 321. (*b*) I. L. R. 10 Bom, 478.

the balance was held in suspense by the widow at the time of her death,—to use the language of the Privy Council in Isri Dut Koer *vs.* Mussumat Hansbutti Koerain" (*a*). The reason of this decision seems to be that there was no "accumulation" but rather an accidental balance of the type described in Puddomonee *vs.* Dwarkanath (*b*).

But these restrictions would not apply to property which has passed to a widow not as heir, but by deed or other arrangement conferring on her absolute powers (*c*).

Having dealt with the rights of widows over accumulations of income the next step for inquiry would be the purposes for which a Hindu widow can mortgage or sell or make a gift of the property she has inherited from her husband. In deciding what these purposes are Jimutvahana does not depart from his theory of spiritual benefit. He says "that since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner (since the benefit of the husband is to be consulted) even a gift or other alienation is permitted for the

Powers of Hindu widows to alienate.

Jimutvahana.

(*a*) 10 I. A. at p. 158. (*b*) 25. W. R. 335.

(*c*) Bhagabutti vs Chowdhury, 2 I. A. 256.

Guru vs Nafar 3 B. L. R., 121; Nellai kumaru vs Narakathammal, I. L. R. 1 Mad. 166.

completion of her husband's funeral rites. Accordingly the author says : 'Let not women make waste,' Here 'waste' intends expenditure not useful to the owner of the property. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property ; or, if still unable, she may sell or otherwise alien it : for the same reason is equally applicable." Besides these things which benefit her husband spiritually the widow is directed to give to the paternal uncles and other relatives of the husband presents in proportion to the wealth, at her husband's funeral rites in accordance with an express text of Vrihaspati to that effect(*a*).

Vyavahara Mayukha.

The Vyavahara Mayukha permits gifts and mortgages or other kinds of alienation for religious or spiritual objects. The author cites a text of Prajapati and a text of Katyayana to support this position. The text of Katyayana is to the following effect : "A widow always engaged in meritorious observances and fasts, constant in the duties of celibacy, intent upon restraining her passions and making holy gifts, shall reach the heavenly abodes even if she have no son"(*b*). Nilkantha states that gifts to *Bandis*, *Charanas*, dancers and the like are prohibited.

(*a*) Dayabhaga, XI, Sec I, 61-63.

(*b*) Chap. IV. S. VIII. p. 78. Mandlik's Translation.

Mitra misra.

Mitra Misra takes a similar view after a long discussion on the subject. He concludes thus: "Therefore it is established that in making gifts for spiritual purpose as well as in making sale or mortgage for the purpose of performing what is necessary in a spiritual or temporal point of view, the widow's right does certainly extend to the entire estate of her husband; the restriction, however, is intended to prohibit gifts to players, dancers and the like, as well as sale and mortgage without necessity" (*a*).

Smriti Chandrika.

The Smriti Chandrika says that the widow is competent to make gifts for religious and charitable purposes, such as the maintenance of old and helpless persons, but not for purely temporal purposes such as gifts to dancers and the like (*b*).

Vivada Chintamoni.

The Vivada Chintamoni after citing a text from the Mahabharata says that women cannot make sale and gift at their own choice (*c*). This is the state of the original authorities on the subject. Let us now turn to the judicial decisions.

In the case of the Collector of Masulipatam *vs* Cavaly Vencata, (*d*) their Lord-

(*a*) Mr. G. C. Sarkar's translation of the Viramitrodaya. p. 141. (*b*) Ch. XI, S. I, 29.

(*c*) Page 212. P. K. Tagore's translation.

(*d*) 8. M. I. A 529, (551); Cal. p. 563.

ships of the Judicial Committee said, that "the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that she possesses for purely worldly purposes. To support an alienation for the last she must show necessity. On the other hand, it may be taken as established that an alienation by her which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. But surely it is not the necessary or logical consequence of this latter proposition that in the absence of collateral heirs to the husband, or on their failure, the fetter on the widow's power of alienation altogether drops. The exception in favour of alienation with consent may be due to a presumption of law that where that consent is given the purpose for which the alienation is made must be proper." In these observations of the Judicial Committee is summed up the whole law on the subject. They show that the widow's power of alienation can be exercised in two classes of contingencies, one class comprising cases of necessity and the other class, cases of raising money for spiritual purposes. The tendency

Collector of Masulipatam vs Cavaly Vencata, leading case on the subject.

Widow's power of alienation can be exercised in case of necessity and for spiritual purposes.

of the Courts has been to determine what is included in "religious or charitable purposes" with reference to the spiritual welfare of the husband of the widow. Accordingly gifts or alienations for the completion of the funeral rites of the husband have been held good on the ground of absolute necessity. Although pilgrimages to Gaya for the purpose of performing *Sradh* of her deceased husband should be performed by the widow, she is not absolutely bound to do so, still alienations of a moderate part of the husband's estate for such pilgrimages have been supported as they conduce to the spiritual welfare of the husband (*a*).

Expenses for pilgrimages by the widow justify alienation of a portion.

Mr. Mayne describes these pilgrimages as "religious benefits which are more in the nature of spiritual luxuries". The test of religious purposes is the spiritual benefit to the husband (*b*) so that where the widow sold her husband's property with the object of securing her own spiritual welfare the alienation has been held to be invalid. In the case of Ram Kawal *vs* Ram Kishore, where the widow dedicated some land to the

(*a*) Ashruf vs Brojessuree 19 W. R. 426; See, however, *contra* I. W. R. 252. where alienation for pilgrimage to Benares was disallowed. Muteeram vs Gopal. 20 W. R. 187.

(*b*) Dayabhaga. Ch. XI, Sec. I P. 61.

idol established by her mother, the alienation was set aside on the ground that the dedication was *primafacie* one, more for the widow's own spiritual welfare than for that of the husband (*a*). On a similar ground the sale by a daughter of her father's estate for the *Sradh* of her mother was set aside (*b*).

A Hindu widow has a right to alienate any portion of the property in her possession if the benefit of her husband's soul required such a sacrifice even though the act by which that benefit was to be secured was to be actually performed by a male member of the family ; so that where a widow sold property to defray the expenses of the *Sradh* of her mother-in-law performed by her husband's brother, the sale was held good (*c*).

Whether gift of the entire property of the husband for religious and charitable purposes is valid.

Although a Hindoo widow is capable of alienating a portion of her deceased husband's estate for purposes supposed to be conducive to his spiritual benefit the question arises whether the gift of the entire estate of her husband for a religious or charitable purpose can be supported.

The Hindu law allows the alienation of

(*a*) I. L. R. 22 Cal, 506 ; see also Lakshminarayana vs. Dasu I. L. R., 11 Mad, 288.

(*b*) Raj Chunder vs Sheeshoo 7 W. R. 146.

(*c*) Chowdhry Junmenjoy vs. Rasmoyee 10. W. R., 309.

her husband's estate by a widow for pious purposes, of which none can be more sacred in her case than the payment of her husband's debts. And it makes no difference if the debts are barred by limitation. It has accordingly been held in a series of cases (*a*) that the alienations made by a widow for the purpose of paying the barred debts of the husband are legal and binding on the reversionary heirs. In this respect a widow stands in a different position from that of a manager of a joint family. The latter can act only with the assent, express or implied, of the body of co-parceners. In the widow's case, the co-parceners are reduced to herself, and the estate centres in her (*b*).

Alienation by widow of husband's estate for pious purposes.

Alienations by widow for paying barred debts of the husband are legal.

Position of widow and manager of a joint family contrasted.

But this rule is subject to this qualification, that she must have acted *bonafide* and not capriciously. If the widow, for instance, preferred a creditor, whose debt was barred by limitation with the view of defrauding another creditor whose debt was not so barred, the alienation in the circumstances, would not be supported. In the case of Rangilbhai *vs.* Vinayak, Mr. Justice West

Qualification of the above rule.

(*a*) Bhala *vs.* Parbhu, 2 Bom., 67 ; Chimnaji *vs.* Dinkar, 11 Bom., 320 ; Bhau *vs.* Gopala, 11 Bom., 325 ; Kondappa *vs.* Subba, 13 Mad., 189 ; Udai *vs.* Ashutosh, 21 Cal., 190.

(*b*) Mr. Justice West's remarks in 11 Bom., 320.

Mr. Justice West's view.

described the position of the widow in relation to the creditors of her deceased husband in these words : "She took the estate as an aggregate, assets and debts together. Her first duty was to pay her deceased husband's debts, and to pay them, as far as she could, equally according to the obligation with which the succession had devolved on her. She may be regarded as in some degree a trustee, or at any rate, under a legal obligation for this purpose, and not at liberty to deal capriciously with the estate which she may alienate at all only for special purposes indicated by the law. She ought not, in performing the duty cast upon her, to prefer one valid claim to another, as her husband might have done, because from him the favoured creditor could have obtained as much by his diligence" (*a*). Such transfer would also be voidable at the option of the creditor defrauded under the provisions of section 53 of the Transfer of Property Act (Act IV of 1882). It has been said that the marriage of a son's daughter before puberty is necessary for the spiritual welfare of the grandfather and an alienation by a widow for defraying the expenses of such marriage is valid (*b*).

S. 53 of the Transfer of Property Act.

(*a*) I. L. R., 11 Bom., 666 (679).

(*b*) Ram Coomar *vs.* Ichamoyee, I. L. R., 6 Cal, 36. Debi Dayal *vs.* Bhan Protap. I. L. R., 31 Cal, 433.

What are religious purposes

In the case of Kasinath Basak *vs.* Harasundari, which, went up to the Privy Council, the Court Pandits said that "religious purposes include a portion to a daughter, building temples for religious worship, digging tanks and the like" (*a*).

Distinction in regard to power of alienation between religious purposes and wordly purposes.

In the case of the Collector of Masulipatam *vs* Cavaly Vencata, their Lordships of the Privy Council whilst fully recognising the general principle that a Hindu widow as a general rule, has no power of alienation, and that the exception lies in case of legal necessity, draw a clear distinction between religious purposes and worldly purposes. Their Lordships point out that the power of the widow to alienate property for worldly purposes is much more limited than in the case of the former. Mr. Justice Mahmood doubted in one case (*b*) whether the original texts of the Hindu law recognise the validity of alienations by a widow for any purposes other than those which are conducive to the spiritual benefits of her deceased husband. The attention of this learned and distinguished judge was not apparently drawn to the passage of the Viramitrodaya cited before, "that in making sale and gift for the purpose of perform-

(*a*) S. C. Sarkar's Vyavastha Darpana. 101. bottom.

(*b*) Indar *vs.* Lalta, I. L. R., 4 All, 532 (541).

Viramitrodaya on the point.

ing what is *necessary* in a *spiritual or temporal* point of view, the widow's right does certainly extend to the entire estate of her husband," which shows that the original authorities on Hindu law did contemplate cases of necessity arising from worldly purposes. But "legal necessity" is hard to define. It is only by instances that an idea of what amounts to legal necessity—can be gathered from Hindu law texts and the numerous decisions to be found in the reports. Each case of legal necessity must be judged on its own facts (*a*).

What is legal necessity has to be gathered from instances.

Is Litigation a legal necessity?

The question whether litigation can be regarded as a legal necessity, is one which seems to be involved in considerable difficulty. A distinction should be drawn between litigation undertaken to protect the property and litigation the object of which is to obtain a possible benefit to the estate. The former class of litigation would no doubt amount to legal necessity. In the recent case of Karimuddin *vs.* Gobind Narain (*b*) the Judicial Committee has held that the preservation of the estate of her husband and the costs of litigation for that purpose were objects which

(*a*) (1908) Bejoy *vs.* Girindra, 8 C. L. J. 458.

(*b*) (1909) I. L. R. 31 All, 497 ; Amjad vs Moniram, I. L. R. 12 Cal, 52 ; Debi Dayal vs Bhan I. L. R. 31 Cal, 433.

justified a widow in incurring debt and alienating a sufficient amount of property to discharge it. Where there is an actual pressure on the estate, *e. g.* the danger of an unsatisfied decree outstanding against the widow as representing the husband or an impending sale for arrears of government revenue, a transfer by way of mortgage or sale will be justified provided there was no money in the hands of the widow sufficient to meet them (*a*). But with regard to the latter class of litigation it may be stated, that if such litigation ends in actual benefit to the estate, any alienation made by the widow which may have been necessary for prosecution of the litigation will be binding on the reversioner, for he who enjoys the benefit ought to bear the burden also. It does not lie within the province of the widow to enter upon speculative litigation, however much the motive may be to benefit the estate. But although cost of litigation for preserving the estate is a recognised head of necessity, this does not mean that a widow engaged in litigation has an unlimited power of borrowing (*b*).

Costs of litigation for the preservation of the estate justify alienation.

Costs of litigation for the purpose of obtaining possible benefits justify alienation if such litigation ends in actual benefit.

It has been held by a Full Bench of the

(*a*) Lalla Baijnath vs Bissen, 19 W. R. 80.

(*b*) Bhimardi vs Bhaskar, 6 Bom., L. R. 628. *per* Jenkins, C. J.

Calcutta High Court that the necessary repairs of houses by a daughter in possession of her father's estate, are a necessity which will not only support an alienation of property by her for that purpose, but will give to the person making such repairs a charge on the property in the hands of the reversioners (*a*). The power of a widow or other female in regard to alienation is not less than that of a manager of joint family property or of an infant's estate. In the celebrated case of Hunooman Pershad *vs* Musst Babooe, the Judicial Committee laid down the principles on which the manager of an infant must act in dealing with the estate of the latter. Their Lordships say :—"The power of the manager of an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the *bonafide* lender is not affected by the precedent mismanagement of the estate" (*b*). These rules have been held applicable to widows or other female owners

Principles governing the action of the manager of an infant in dealing with the estate of the latter, laid down in the case of Hunooman Pershad vs. Musst Babooe,

and held applicable to the case of widows and other female owners.

(*a*) Hurry Mohan vs Gonesh Chandra, I L. R. 10 Cal., 823.

(*b*) 6 M. I. A. 393 (423).

of limited estate. In the case of Kameswar Prasad *vs* Run Bahadoor Singh (*a*), their Lordships of the Privy Council say :—"Their Lordships in no degree depart from the principles laid down in the case of Hunooman Persad Panday *vs* Mussummat Babooee Munraj Koonweree which has been so often cited. They have applied those principles in recent cases not only to the case of a manager for an infant, which was the case there, but to transactions on all fours with the present, namely alienations by a widow and to transactions in which a father, in derogation of the rights of his son under the Mitakshara law, has made an alienation of ancestral family estate." Following the principles laid down in these cases it has been held that a permanent lease granted by the widow of her husband's estate was binding on the reversioners, it having been found that the lease was for the benefit of the estate (*b*). It has, however, been held in Bombay that a permanent alienation of immoveable property by a widow, not for the purpose of preserving the estate, but for improving it, is invalid. It was pointed out in that case that "necessity" involves some notion of pressure from without and not

Permanent leases granted by the widow for the benefit of the estate are valid.

Not so however in Bombay.

(*a*) I. L. R. 6. Cal, 843.

(*b*) Dayamani vs. Srinibash, I. L. R. 33 Cal., 842.

merely a desire to better or to develop the estate ; for this last implies vast powers of management which in practice would not easily be distinguishable from an authorization to embark on speculative ventures (*a*).

Responsibility of a *bonafide* creditor as laid down in Hunooman Persad's case.

The Judicial Committee have, in the case of Hunooman Prasad, laid down the rule that the lender dealing with the manager of an infant's estate should not advance the money without reasonable enquiries as to the existence and nature of the necessity although he is not bound to see to the application of the money. The judgment in that case ends thus :—"Their Lordships do not think that a *bonafide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived" (*b*). The same rules have been held to apply to the obligation of a lender dealing with a qualified female heir in respect of the estate. It has accordingly been held that, in order to sustain an alienation of the property held by a Hindu widow for her widow's estate, it must be shown either that there was legal necessity or at least that the grantee was led, on reasonable grounds to believe that there

(*a*) Ganap vs. Subbi, I. L. R. 32 Bom., 577. (1908).

(*b*) 6 M. I. A. 393 ; see also Ghansham vs. Badiya Lal. I. L. R., 24 All., 547.

was such necessity (*a*). The burden of proving necessity would of course lie on the grantee. In the case of Sham Sunder Lall *vs* Achhan Kunwar, the Judicial Committee said that it is not incumbent on the defendant who relies on the absence of legal necessity for the borrowing by a woman holding her limited estate, to plead or prove such absence : but it is for the plaintiff to state and to prove all, that will give validity to a charge (*b*).

Burden of proving necessity is on the creditor or purchaser.

In order to establish necessity it must be proved that there were no funds in the hands of the limited owner sufficient to meet the demands (*c*).

If the widow elects to sell, when it would be more beneficial to mortgage, the sale can not be set aside as against the purchaser provided the widow and the purchaser are both acting honestly. The test of validity of the sale is, as pointed out by Mr. Justice West, that both parties must have "acted fairly to the expectant heirs" (*d*). Sir Charles Sargent C. J., in a later case said : "A Hindu

Test of the validity of the sale by the widow.

(*a*) Amarnath vs. Achan Kuar. I. L. R. 14 All., 420.

(*b*) I. L. R. 21 All., 71 ; See also Roy Radha Kissen vs. Nauratan Lall, 6 C. L. J., 490.

(*c*) Dharam Chand vs. Bhawani Misrain. I. L. R. 25 Cal. 189. (P. C).

(*d*) Chimanji vs. Dinkar, I. L. R. 11. Bom. 320 (324) ; see also Phool Chand vs. Rughoobuns, 9 W. R., 108.

widow like the manager of a Hindu family must be allowed a reasonable latitude in the exercise of her powers, provided, as Mr. Justice West says, she acts fairly towards expectant heirs" (*a*).

Unsecured debts, how far binding on reversioners.

The question whether the debts contracted by a widow or daughter for a proper purpose will bind the estate in the hands of the reversionary heirs, although such a debt was not secured by a mortgage or charge on the estate has given rise to conflicting opinions. The Calcutta High Court has held that if the debt was contracted for a legal necessity the reversioners will be liable (*b*). In the High Courts of Madras and Allahabad the weight of authority is against the liability of the estate in the hands of the reversioners, and this freedom from obligation on their part is attributed to the legal inability on the part of the widow to make the estate liable in the absence of a specific charge (*c*). In the early Bombay decisions a similar view was taken. (*d*). In the

Conflict of judicial opinions.

(*a*) Venkaji vs. Vishnu, I. L. R. 18 Bom., 534 (536); see also Bejoy vs. Girindra 8 C. L. J., 458.

(*b*) Ram Coomar vs. Ichamoni, I. L. R., 6 Cal., 36; Hurry Mohan vs. Gonesh Chunder, I. L. R., 10 Cal., 823 (F. B).

(*c*) Ramasami vs. Sellattammal, I. L. R. 4 Mad., 375; Dhiraj vs. Mangammal, I. L. R., 19 All., 300.

(*d*) Gadgeppa vs. Apaji I. L. R., 3 Bom., 237.

Full Bench decision of the Bombay High Court.

case of Sakrabai vs. Maganlall (*a*), Sir Lawrence Jenkins, Chief Justice, examined all these cases in some detail and after a careful consideration of that portion of the Mitakshara which deals with debts, came to the conclusion that a widow, like a manager, can, when there is necessity, borrow on the credit of the business assets so as to make them liable even after her death. In this case, it is true, the debts were trade debts properly incurred by a Hindu widow on the credit of the assets of the business to which she had succeeded as heiress of her deceased husband. But the observations of the learned chief justice are general. In giving judgment in this case his lordship said : "The cases show that the manager of a family business can make its assets liable for a trade debt, without a specific charge, and Kameswar's (*b*) case shows that the ability of a widow to charge the inheritance so as to affect it in the hands of reversioners, is judged by the same principles as are applicable to a charge by a manager. I do not think that it was intended to disturb that principle when it was said in Sham Sundar *vs.* Achhan Kunwar (*c*) that 'the position of a Hindu widow or

(*a*) I. L. R. 26 Bom. 206. (1901).

(*b*) I. L. R., 6 Cal 843. (*c*) I. L. R., 21 All., 71.

daughter is not by any means the same as that of the head of an undivided family,' for it appears from the rest of the judgment that, as in the case of a manager, so in relation to a widow, the touchstone is "necessity".

In the absence of legal necessity a widow can alienate property with the consent of her husband's kindred.

"In the absence of legal necessity, a Hindu widow can alienate property to which she has succeeded on the death of her husband with the consent of her husband's kindred." This was laid down by the Judicial Committee in the case of the Collector of Masulipatam *vs.* Cavaly Vencata (*a*). "The kindred in such case", their Lordships observe in a later case, "must generally be understood to be all those who are likely to to be interested in disputing the transaction. At all events, there should be such a concurrence of the members of the family, as suffices to raise a presumption that the transaction was a fair one, and one justified by Hindu law" (*b*). Upon the practical application of this general principle there has been much discussion in the High Courts in India. A Full Bench of the High Court at Allahabad, in the case of Ramphal Rai *vs* Tulakuari (*c*)

(*a*) 8 M. I. A. 529.

(*b*) Raj Lukhee Dabea vs Gokool Chunder. 13 M. I. A. 209 (228).

(*c*) I. L. R. 6 All., 116.

considered that "the plain principle deducible from these rulings of the Privy Council is, that in order to validate an alienation by a Hindu widow of her deceased husband's estate for purposes other than those sanctioned by Hindu law, it must have the consent of all those among his kindred who can reasonably be regarded as having an interest in questioning the transaction." And they accordingly held that the consent of the heir presumptive to an alienation by a widow was not sufficient to defeat the rights of a more remote reversioner. The High Court of Calcutta has taken a different view. In the case of Nobo Kishore Sarma Roy *vs.* Harinath Sarma Roy *(a)* a Full Bench held that under the Hindu law current in Bengal "a transfer or conveyance by a widow upon the ostensible ground of legal necessity, such transfer or conveyance being assented to by the person who at the time is the next reversioner, will conclude another person not a party thereto, who is the actual reversioner upon the death of the widow, from asserting his title to the property".

Consent of the reversioner for the time being—how far sufficient.

In a subsequent case the same High Court held that the consent must be of the whole body of persons constituting the next reversion. The decision of the Full Bench

(a) I. L. R. 10 Cal., 1102.

seemed to follow as a logical consequence from another well-established rule of Hindu law, *viz.*, that the widow is competent to relinquish her estate to the next male heir of her husband. As Sir Richard Garth puts it: "If it is once established, as a matter of law, that a widow may relinquish her estate in favour of her husband's heir for the time being, it seems impossible to prevent any alienation, which the widow and the next heir may thus agree to make" (*a*).

Beharilall vs. Madho Lall (P. C.)

The ground on which the Calcutta Full Bench based its decision receives support from the following observations of the Judicial Committee in the case of Behari Lall *vs.* Madho Lall (*b*) :—"It may be accepted that, according to Hindu law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate." The Calcutta decision has been followed in Madras in so far as it lays down that a widow can effect a valid surrender of her entire estate to the next reversioner for the time being (*c*) ; but the Madras Court does not admit that alienation of a part of the estate with the consent of the then

(*a*) See F. B. decision in 10 Cal., 1102.

(*b*) I. L. R. 19 Cal., 236 (241).

(*c*) Marudamuthu vs. Srinivasa. I. L. R., 21 Mad., 128.

presumptive reversioner is valid. The question has been recently considered by the High Court of Bombay in the case of Vinayak *vs.* Gobind (*a*). In giving judgment Sir Lawrence Jenkins, C. J., says :—"There can be no question, that apart from legal necessity a widow can validly alienate land that has devolved upon her from her husband with the consent of the reversioner. The basis on which this rests is a matter of controversy : the High Court of Calcutta, on the whole, appears to favour the view that the consent derives its effect from the power supposed to reside in a widow of accelerating, by the surrender of her own interest, the interests of the reversioners. It is impossible not to feel some difficulty as to this doctrine : for it would seem to rest on the application to a Hindu widow's estate of the English doctrine of the merger of a particular estate, with a result that the devolution of a property according to law is influenced by the acts of those who are simply in the possible line of succession."

Question recently examined in Bombay.

"The other view is that the consent of the persons interested to oppose the transaction evidences its propriety, if not its actual necessity. This has a parallel in the law

(*a*) I. L. R. 25 Bom., 129. (133).

relating to a widow's adoption under certain circumstances and it finds support in the texts (*a*). .....This view has, too, in a large measure the sanction of the Privy Council.... Turning, then, to Bombay, the High Court here appears to have accepted this view rather than that which finds favour in Calcutta.' This was the state of authorities in India, when the question was raised before the Privy Council in the case of Bajrangi Singh *vs.* Manokarnika Bakhsh Singh (*b*). Their Lordships after reviewing the decisions of all the High Courts stated that the principle enunciated in the case of Raj Lukhee Debia (*c*) was admitted in India and that the only question that required consideration was "the *quantum* of consent necessary." Their Lordships in determining this question said :—"The High Court of Allahabad, indeed, does not recognize the validity of surrenders in favour, or alienations with the consent, of presumptive reversioners so as to

Question set at rest by the Judicial Committee in Bajrangi vs Manokarnika.

(*a*) Here the chief justice quotes a text of Narada cited in Dayabhaga XI, I, 64 cited before, and a text of Jimutvahana : "In the disposal of property by gift or otherwise she is subject to the control of her husband's family after his decease and in default of sons."

(*b*) 6 C. L. J., 766.

(*c*) 13 M. I. A., 209.

to defeat the title of the actual reversioner at the time of the widow's death. But this restriction is at variance with the principle itself, and is not in accordance with the practice in other parts of India in which the Mitakshara law prevails. Their Lordships have not been referred to any cases in the province of Oudh in which this restriction has been acted upon : and though they would be unwilling to extend the widow's power of alienation beyond its present limits, they cannot adopt the further limitation which the Allahabad High Court has sought to establish. They agree with the High Court of Calcutta (Radha Shyam *vs* Joy Ram) that ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render strict enforcement of this rule impossible." This decision settles that the consent of the next reversioner or reversioners, as the case may be, will render an alienation valid. It makes no difference if the consent of the entire body of reversioners is obtained after the alienation, on the principle embodied in the maxim "every ratification of an act already done has retrospective effect, and is equal to a previous request to do it." In the

Alienation by widow with the consent of the next reversioner is valid.

(*a*) I. L. R. 17 Cal. 896.

case before the Privy Council the alienation of the whole estate was effected piece-meal by the widow by successive deeds. The case accordingly may be regarded as a good authority for the proposition that a Hindu widow may validly alienate *a portion* of her husband's property with the consent of the next reversioners (*a*).

Alienation by widow of a portion of husband's property with the consent of next reversioners is valid.

Madras High Court thinks otherwise.

But the Madras High Court considers otherwise, and adheres to the view taken by the Full Bench of that Court in which it has been held that the alienation in order to be effective must comprise the whole of the limited estate (*b*). In a recent case the learned judges of the Madras High Court negatived the contention that the said Full Bench has been virtually overruled by this decision of the Judicial Committee (*c*). There is thus a conflict between the Calcutta and Madras decisions on the question of the interpretation of the decision in Bajrangi's case on this point.

(*a*) Pulin Mandal v. Bolai Mandal. I. L. R. 35 Cal. 939 ; see also 12 C. W. N. 49.

(*b*) I. L. R. 21 Mad., 128.

(*c*) Rangappa vs Kamti, I. L. R. 31 Mad. 366 (F. B) ; See also : Muthuveeru vs Vythilinga, I. L. R. 32 Mad. 206 ; see however the remarks of Wallis, J., in the order of reference at page 376 of 31 Mad. where he considered the Full Bench decision in Marudamuthu's case overruled by the P. C.

But whether the transfer is of the whole or part of the estate, the actual reversioner at the death of the widow would certainly be estopped from questioning the alienation made with the consent of the next reversioner, in case the former was claiming through the latter (*a*).

Where next reversioner is a female, her consent will not bind the male reversioner.

Where, however, the next reversioner is herself a female whose interest is the limited one of Hindu widows, her consent to an alienation will not bind the male reversioner who takes an absolute estate. In a recent case (*b*) it has been held in Bengal that the consent of daughters to the sale of immoveable property by the widow does not raise any presumption of law that the purpose for which the alienation was made was proper so as to pass an absolute and indefeasible estate to the alienee. Mr. Justice Lalmohan Doss in giving judgment in this case said—"For the same reasons, if the widow had, with the concurrence of the daughters, alienated the property in favour of a stranger, the alienee would not have taken any larger estate than the limited and qualified estate of the widow or of the daugh-

(*a*) Bajrangi vs Manokarnika, 6 C.L. J. 766; Rangappa vs Kamti, I. L. R. 31 Mad. 366. (F. B.); also 32 Mad., 206 cited *supra*.

(*b*) Bepin vs Durga, I. L. R. 35 Cal., 1086.

ters, for the alienee cannot have a larger estate than that possessed by the alienors, and the coalition of the estate of the widow with that of the daughters not having the effect of amplifying the *quantum* of the resultant estate." This view receives indirect support from the cases cited below (*a*).

Alienation by widow without consent of reversioner and without justifying necessity is not void but voidable.

The alienation by a widow without the consent of the reversioner and without any justifying necessity is not void but is voidable ; for she is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving on her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void but it is *primafacie* voidable at the election of the reversionary heir. He may think fit to affirm, or he may at his pleasure treat it as a nullity without the intervention of a Court (*b*).

(*a*) Kooer Goolab Singh vs Rao Kurun Singh, 14 M. I. A., 176 ; Varjiban Rangji vs Ghelji Gokaldas, I. L. R., 5 Bom. 563 ; Vinayak Vithal Bhange vs. Gobind Venkatesh Kulkarni, I. L. R., 25 Bom. 129 ; Abinash Chander Mazumdar vs Hari Nath Shaha, I. L. R., 32 Cal. 62.

(*b*) Bejoy vs Krisna, I. L. R. 34 Cal. 329 (P. C) ; Modhoosudan vs Rooke, I. L. R. 25 Cal., 1 (P. C) ; Sadai vs Serai, I. L. R. 28 Cal. 532 ; Bijoy Gopal

Daughters take the same estate as widows.

In the case of Hurry Doss *vs* Uppoornah(*a*), a question was raised whether by the Hindu law current in Bengal the interest of the daughter in the estate of her deceased father is of the same nature as the interest of a widow in her husband's estate. But it is now settled that the daughter and other female heirs like the mother and daughter etc. are subject to the same restrictions and limitations as to alienations in respect of the estate inherited by them, as is the widow in respect of her deceased husband's estate (*b*). In Bombay it would be different with sisters and daughters both of whom take an absolute estate.

Not so in Bombay.

Private sales and sales in execution of decrees governed by same principles.

The same principles which govern private sales by a Hindu widow, will also govern sales held in execution of decrees against a qualified female owner. Although for certain purposes the estate of her husband vests in the widow absolutely, yet it would not be sold for the personal debts of the widow or in execution of a personal decree against

Estate would not pass by a personal decree against widow.

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v. Nil Ratan, I. L. R. 30 Cal. 990 ; Hayes vs Harendra, I. L. R. 31 Cal. 698 ; Deputy Commissioner of Kheri vs Khanjan, I. L. R. 29 All., 331 (P. C).

(*a*) 6 M. I. A., 433.

(*b*) See as to daughter, Chotay lall vs Chunno lall, I. L. R. 4 Cal. 744 ; Ray Radhakissen vs Nauratan, 6 C. L. J. 513 (1907.)

her. All that would pass under it would be her own limited interest in the property left by her husband (*a*). Similarly, where a decree for arrears of rent was obtained against a daughter in possession of a life estate inherited from her father, it has been held that the debt was a personal debt for which the father's estate was not liable. But where the heiress is sued as representing the estate and a decree obtained against her as such representive, then the estate is liable to be sold in execution of the decree. No difficulty can arise in cases where the decree is passed in the life-time of the male owner and the female is brought on the record as his legal representative. The sale will pass the estate. But where the decree has not been so obtained then the suit will have to be revived against her as the representative of the last male holder. Where that is done and a decree obtained against the widow as such, then the sale in execution of the decree will pass, not the widow's personal interest in the property but the absolute estate. The principle to be followed in such cases is stated by Sir Barnes Peacock in the case of Ishanchander Mitter *vs.*

Estate would pass, where the decree is obtained against the heiress as representing the estate.

Ishan Chandra Mitter vs. Buksh Ali.

(*a*) Baijun vs. Bij Bhookua, I. L. R. 1 Cal., 133. Nagendra vs. Kaminee, 11 M. I. A., 241.

(*b*) Kristo vs. Hem chunder, I. L. R. 16. Cal., 511.

Buksh ali (*a*) in these words : "Supposing in an ordinary case a suit is brought against an executor, and judgment is given against him as an executor, the purchaser under an execution buys not the personal estate of the defendant, but the property of the defendant in his representive character for a debt which was due from him in that capacity." The principle expressed here has been approved by the Judicial Committee in subsequent cases (*b*). The effect of these decisions of the Judicial Committee has been summarized by Mr. Justice Mookerjee in the recent case of Roy Radhakissen *vs.* Nauratan in these words :—"It is well settled that the test to be applied in order to determine the exact interest which passes at a sale in execution of a decree against a Hindu widow or a qualified proprietor similarly situated, is whether the suit in which the sale was directed was one brought against the widow upon a cause of action personal to herself or one which affects the whole inheritance of the property in the suit" (*c*). If the suit is simply for a personal

Law on the subject summarised by Mr. Justice Mookerjee in Roy Radhakissen vs. Nauratan.

(*a*) Marshall's Reports, 614.

(*b*) General Manager, Durbhunga vs. Ramapat, 14 M. I. A., (605) ; Jugal kishore vs. Jotendra mohan, I. L. R. 10 Cal., 985 ; Partab vs. Triloki, I. L. R. 11 Cal., 186 ; Abdul Azir vs Appuyasami, L. R. 31 I. A. 1.

(*c*) 6 C. L. J., 490 (519.)

Where the suit is for a personal claim against widow, only her limited interest passes.

claim against the widow, then merely the widow's qualified interest is sold, and the reversionary interest is not bound by it. If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes.

Where the suit is upon a cause of action affecting the inheritance, the whole estate passes.

In many of the cases although the right, title and interest of the widow had been sold the whole interest in the estate was held to have passed and the reversionary heirs bound by it. Closely connected with this is the question as to how far a decree obtained against a Hindu widow either in a suit brought by or against her is binding on the reversionary heirs of her husband.

Katama Natchiar vs. Raja of Shivagunga, 9 M. I. A. 543.

In the case of Katama Natchiar *vs* Raja of Shivagunga *(a)*, the Judicial Committee held that where there has been a decree in a suit brought by a Hindu widow for possession of a zemindary as heir to her husband, it would have bound those claiming the zemindary in succession to her if there had been a fair trial of the right in that suit that is effectual and operative against the reversioner unless the decree can be successfully impeached on some special ground. Their Lordships in giving judgment said :—"The same principles which has prevailed

(a) 9 M. I. A. 543.

in the Courts of this country as to tenants-in-tail representing the inheritance would seem to apply to a Hindu widow ; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow." Their Lordships reaffirmed this principle in the case of Partapnarain *vs* Triloki nath (*a*). The principle of these decisions have been held to be applicable to the case of other female heirs like the daughter and the mother (*b*).

Widow's possession as heiress not adverse to reversionary heir but where she holds independently of her husband it is otherwise.

So long as the widow holds possession of her deceased husband's estate as an heiress entitled to a life-estate, her possession is never adverse to the reversionary heir, but where she holds under a title independently of her husband, her possession becomes adverse to the reversioners and limitation as against the latter begins to run from the date of such possession. Suppose the widow, whose husband was a member of a joint Mitakshara family at the time of his death, and who is therefore only entitled to maintenance takes possession of her deceased husband's estate after his death, a suit by the coparceners of her husband will be barred by limitation if brought after twelve

(*a*) I. L. R. 11 Cal, 186. (*b*) 9 M. I. A. 604.

years from the date of such possession her possession being regarded as adverse to the reversioner. So where the mother takes possession of the estate of her deceased son to the exclusion of the son's widow and continued in possession for more than 12 years, a suit by the son's widow and the reversionary heirs of the son was held barred by limitation *(a)*, for the possession of the mother was not that of a Hindu widow as such, but as a tresspasser. But where the widow takes possession as heir to her husband, she could not, by any act or declaration of her own, while retaining possession of her husband's estate, give her possession or estate a character different from that attaching to the possession or estate of a Hindu widow *(b)*.

Extinction of widow's right do not extinguish that of reversioner.

The reversioner does not derive his right from or through the widow, consequently the extinguishment of the widow's right under section 28 of the Limitation Act does not extinguish the right of the reversioner *(c)*.

(a) Harinath vs Mothura mohun. I. L R. 21 Cal, 8 (P. C); Lilabati vs Bishnu, 6 C. L. J. 621; Roy Radhakissen vs Nowruthun, 6 C. L. J, 490; Madan vs Akbarayar, I. L. R. 28 All, 241; Kedar *vs.* Jatindra, 9 C. L. J. 236.

(b) Lachan kunwar vs Manorath, I. L. R. 22 Cal, 445; Mahabir vs Adhikari, I. L. R. 23 Cal, 942.

(c) Ranchordas vs Parbati, I. L. R. 23 Bom, 725 (1899) P. C.); Amrit *vs.* Bindessari, I. L. R. 23 All 448; Kedar *vs.* Jatindra, 9 C. L. J. 236.

Art. 141 of Limitation Act (Act IX of 1908.)

Article 141 of the Limitation Act (Act IX of 1908) enacts that in a suit (for possession of immoveable property) by a Hindu entitled to the possession of immoveable property on the death of a Hindu female the period of limitation is twelve years from the death of the female. It has been held by the Judicial Committee that where a Hindu widow granted a lease of immoveable property of her husband for a term extending beyond her own life, a suit by a reversioner to recover the same is governed by the 12 years' period of limitation provided by article 141 of Act XV of 1877 and not by the three years' period prescribed by section 91 of the second schedule (*a*).

wastes by widow, how restrained.

If a Hindu widow abuses her estate or commits acts of waste with regard to it the reversioner or the rightful heir of her husband is not without remedy. He might bring a suit in the nature of those *bills quia timet* of the Chancery Courts in England. These bills to restrain the widow from wasting the estate, are, in the words of Mr. Justice Story, "in the nature of writs of prevention, to accomplish the ends of precautionary justice. They are ordinarily applied to prevent wrongs or anticipated

(*a*) Bijoy vs. Krishna Mahisi, I. L. R. 34 Cal, 329 (1907) (p. c.);

mischiefs, and not merely to redress them when done. The party seeks the aid of the Court of equity, because he fears (*quia timet*) some probable injury to his rights or interests and not because an injury has already occured which requires any compensation or other relief"(*a*). Sir Lawrence Peel, Chief Justice, in the case of Hurry Doss *vs* Rungunmoney Dasee, recognised the power of the Courts in India to grant relief on suits answering the description of bills in equity *quia timet*. "The Hindu female," said the Chief Justice, "is rather in the position of an heir taking by descent until a contingency happens, than an heir or devisee upon a trust by implication. Therefore a bill filed by the presumptive heir in succession against the immediate heir who has succeeded by inheritance must show a case approaching to spoliation" (*b*). In the case of Hurry Doss Dutt *vs* Srimutty Uppoornah, the Judicial Committee held that the bill *quia timet* by a reversioner against the daughter of an intestate Hindu in possession of personalty was rightly dismissed as it was not shown that there was danger to the property from

By suits in the nature of *bills quia timet.* of Courts of Chancery.

(*a*) See Story's Equity Jurisprudence, Chap. XX, S. 826, 2nd Eng. Edition.

(*b*) Hurry Doss vs Rungunmoney, Sev. 651; Brindaban v. Sureswar, 10 C. L. J., 263.

the mode in which the party in possession was dealing with it. But a bill *quia timet* is not the only remedy. The Court may give relief by the appointment of a receiver (*a*). It has been held recently in Bengal that in a suit for partition amongst coparceners, one of whom is a widow, if a case is made out that there is reasonable apprehension of waste by the widow, provisions can be made in the final decree in the suit for prevention of future waste by the widow of such cash or other moveable property as falls to her share, separate suit for injunction based on her conduct in the use of property in her possession subsequent to partition is not necessary (*b*).

or by the appointment of a receiver.

The reversionary heirs have a like remedy against the transferee of the widow or other limited heir for prevention of waste or destruction of property (*c*). In the case of acquisition of land in which a widow or daughter has a life estate by Government under Act I of 1894 ample protection is made for prevention of waste of the compensation money. Such money shall not under section 32 of the Act be made over to the widow

Reversionary heir has a like remedy against transferee of widow or other limited heir.

Land Acquisition act. (Act I of 1894).

(*a*) See Story's Equity Jurisprudence, Chap XX., S. 826 2nd. Eng. Edition. See also Sec 54, ill. (*m*) Specific Relief act. (*b*) I. L. R., 2 Cal., 262 ; 9 Cal., 580.

(*c*) Durga vs Chinta, I. L R. 31 Cal 214.

or daughter but shall be invested in the purchase of other lands to be held under like title and conditions of ownership as the land in respect of which such money shall have been deposited or held or if such purchase can be effected forthwith, then in such government or other approved securities as the Court shall think fit. Payment of the rent or other proceeds of such investment will be made to the female holder as the person for the time being entitled to the possession of such land *(a)*.

Even where a widow had sold the property to a third person without legal necessity before the acquisition and such third person had withdrawn the compensation money he was held bound to refund the same, in order that the Court might invest the same in the manner provided for by section 32 of the act for the ultimate benefit of the reversionary heirs *(b)*. If the money be invested in the purchase of other lands, the transferee would be entitled to hold possession of it as limited owner during the lifetime of the widow, and upon her death,

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(a) Sheorattan vs. Mohri, I. L. R. 21 All, 354; Sheoprasad vs Jaliha, I. L. R., 24 All., 189.

(b) Gobind vs Shamlall, W. R. Sp. No., 165 (167). Mrinalini vs Abinash, 11 C. L. J., 533 (1910); Kamini vs Promotho, 13 C. L. J. 597.

the property would pass into the hands of the original owner.

The same principles which apply to inheritance from males govern inheritance from females.

Hitherto we have been discussing the principles which govern the inheritance by females from males. The same principles are also applicable to estate inherited by females from females. The nature of the estate taken by a woman from males is the same as that inherited from females. In the recent case of Sheopratab Singh *vs.* The Allahabad Bank (*a*) the Judicial Committee observe that inheritance from males and that from females could not be differently treated and that what a woman has inherited from a woman, she does not hold as her absolute and alienable estate, but for a qualified estate, with reverter after her death to the heirs of her predecessor in title. With regard to the doctrine of reverter their Lordships point out that the question may be different in those parts of Bombay which are governed by the Mayukha.

Rules as to descent of property inherited from a female.

Closely connected with this is the question of the descent of property inherited by a female from a female upon which there has not been until recently a conclusive ruling of the Judicial Committee. In the case of Sheosanker Lall *vs.* Debi Sahai (*b*),

(*a*) I. L. R. 25 All., 476 (P. C.)

(*b*) I. L. R. 25 All., 468.

their Lordships point out that in this respect "there has been, however, a remarkable concurrence of opinion in India among judges, text writers, and pure scholars, to the effect that no distinction can be drawn consistently with the Mitakshara from what has been inherited from a male and from what has been inherited from a female." In Bengal it is well settled that what has once descended as *stridhan* does not so descend again (*a*). This is another way of expressing the well-settled rule which obtains in Bengal that property inherited from a woman by a woman does not on the death of the latter pass as her *stridhan*. With regard to Bombay, wherever the Mayukha is accepted, it is held that its rules govern the descent of property. Those rules differ widely from the texts of the Mitakshara and exclude the idea that what has passed by inheritance from woman to woman goes on the death of the latter to the special line of heirs with a preference for females who would succeed to it, if it were *stridhan* proper (*b*).

(*a*) Hari doyal *v* Giris Chandra 17 Cal. 911.

(*b*) Vijarangam v Lakshman 8. Bom. H. C. R. Oc. 244 (260.) Bai Narmada v Bhagwanta Rai 12. Bom. 535. Monilal v Rai bewa 17. Bom. 758. Sheosankar v Debi Sahai 25. All 474. P. C.

CHAPTER VI.

PROPRIETARY RIGHTS OF WOMEN—STRIDHANA.

It has been shown in the preceding pages that in the early Vedic period it is possible to discern some indication of a theory of perfect equality of men and women with regard to their capacity for holding property. There are passages in the Vedas to show that in early times married women pursued independent occupations and acquired gain by them (*a*). There are no texts in the Vedas to the effect that these earnings were absolutely at the disposal of the man to whom they belonged. Manu and Katyayana no doubt assert this, but we cannot interpret the position of women in the Vedic age by what is said by these later sages many centuries after. Jaimini, whose interpretation of the Vedic teaching must prevail above all others, discards the idea that legal incapacity for property ascribed to women in some of the texts of Manu and Katyayana could have prevailed in the Vedic period. On the other hand he refers to a Vedic text which shows that women had proprietary capacity in those early times (*b*). But

Women had full proprietary capacity in Vedic period.

(*a*) Dr. Mayr, 162.

(*b*) 16th aphorism Page 79 *ante*.

They lost this position anterior to Manu's time.

women apparently lost this position of equality in the overgrowth of another stage in the national existence, to which must be attributed the text of Baudhayana, that women are incompetent to *inherit* ; by the time the Code of Manu was compiled women had fallen to a distinctly lower position. Manu was only recording the indications of such a state of society in so far as it concerned the position of women in the well-known text : "A wife, a son, and a slave, these three are declared to have no property ; the wealth which they earn is acquired for him to whom they belong" (*a*). The verse probably meant that these persons were unable to dispose of their property independently (*b*). In other words, the wife had a passive proprietary capacity.

But this is certain, that it was only in the course of its development during the Smriti period that Hindu law broke through, one by one, the rigorous limitations of the law laid down in the text just cited—a text ascribed to the period anterior to Manu's compilation—and gradually established the principle of the active proprietary capacity of women. The term *Stridhana* (generally woman's property), which according to Manu

(*a*) Manu, VIII, 416.

(*b* See comment of Mitakshara on verse 49 (Debts).

and others denoted women's *peculium*, afterwards came to include all kinds of property acquired by a woman including that by inheritance (*a*). Having regard to the uncertainty in Hindu chronology, it is impossible to trace precisely the steps by which Hindu women from the condition of being *Nirdhana* (incapable of holding property)—a condition to which they descended during the period of the Smritis—rose again to the high position assigned to them by Vijnaneswara. But it is possible to trace in the Smritis something like a gradual development of the recognized capacity of women for property which may have corresponded in a measure to the successive generations in which the texts were framed.

Smritis shew a development of the capacity of women.

Baudhayana provides for the succession, in case of woman's property, of daughters to their mother's ornaments consistently with his rule that women are generally incompetent to inherit (*b*). Apastamba says that in a partition the share of a wife comprises only her ornaments and the wealth given to her by her relations (*c*).

Baudhayana.

(*a*) See Vijnaneswara's definition of *Stridhan* in the Mitakshara.

(*b*) Baudhayana, Prasna II. Adhya 2. Kan. 3, 43 (Sacred Books of the East, Vol, XIV, P. 230.)

(*c*) Prasna II. Pat 6, Kan 14. V. 9.

Manu.

Manu enumerates six kinds of *Stridhana* or woman's property. "What was given before the nuptial fire, what was given on a bridal procession, what was given in token of love, and what was received from her brother, mother or father, that is called the six-fold property of a woman" (*a*). To these six kinds of woman's property mentioned by Manu, Vishnu adds *gifts by sons, the present on supersession, (Sulka) the wife's fee and the gift subsequent* (*b*). Manu and Vishnu, both declare that the ornaments which may have been worn during her husband's life time, his heirs shall not divide, those who divide them become outcasts (*c*). The texts of Manu and Vishnu in the original are identical. The English rendering of this verse in Vishnu is based on Kulluka's interpretation of the identical passage of Manu ; and this interpretation is

Vishnu.

(*a*) Manu IX, 194.

(*b*) Katyayana defines a gift subsequent अनुाधेय thus :—what has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent ; and so is that which is similarly received from the family of the kindred.

(*c*) पतौ जीवति यः स्त्रीभिरलङ्कारोधृतो भवेत्।

न तं भजेरन्दायदीभजमानापतन्ति ते ॥

Manu, IX, 200 ; Vishnu, XVII, 22 (Sacred Books of the East series).

accepted by Vijnaneswara, (*a*) Madhava, (*b*) Varadaraja, (*c*) and others. Nanda Pandita interprets the text differently as follows: "Those ornaments, which the wives usually wear should not be divided by the heirs whilst the husbands are alive." Upon this interpretation of Vishnu by Nanda Pandita, Mr. Mayne bases the theory that the right of married women to ornaments ended in early times with the life of the husband. That is to say, as soon as he died, the dominion over her passed to others, and with it the power of appropriating her property (*d*). Messrs. West and Buhler, adopting Nanda Pandita's interpretation, infer that the ornaments of widows may be divided. Although, as Sir Gooro Das Banerjee points out, the original text of Vishnu would bear either interpretation, yet there are good reasons to suppose that the former interpretation (*i.e.* that of Kulluka) is likely the right one and is best supported by facts. Apastamba, as we have already seen, recognises the right of the wife to ornaments on a partition and it is not natural to expect that Vishnu coming after him, would alter the position of women for the worse. Dr. Jolly remarks that Nanda

Interpretation of Vishnu's text by Nanda Pandita.

(*a*) Mitakshara I. 4, 19. (*b*) Burnell's Dayabibhaga, 51. (*c*) Burnell's Vyavahara Nirnaya, 49.

(*d*) Mayne's Hindu Law and Usage, 881 (7th. Edition).

Pandita's interpretation is hardly reconcileable with the laws of Sanskrit syntax and composition and is opposed to all ancient authority (*a*). Narada, who presents some indications of modern influences, practically reiterates the rule of Manu regarding the six-fold property of women with this slight difference that he mentions "husband's donation" in the place of "what was given in token of love" in the text of Manu cited above. Narada limits "*Stridhana*" to gifts from the husband alone, and not from strangers.

Narada.

Katyayana mentions the same six kinds of *Stridhana* as Manu (*b*). But he imposes a limitation, which is not to be found in Manu as appears from the text : "Whatever wealth she may gain by arts, as by painting or spinning, or may receive on account of her friendship from any but her kindred, her lord has dominion over it. But the rest is declared to be women's property." Devala certainly is more liberal when he says :— "Her subsistence, her ornaments, her perquisites and her gains are the separate property of a woman. She herself exclusively enjoys it ; and her husband has no right to use it unless in distress" (*c*).

Katyayana.

Devala.

(*a*) Tagore Lectures (1883). Page 232.

(*b*) Cited in the Dayabhaga, Chap. IV., Sec. I.

(*c*) *Ibid*, Chap. IV., Sec. I, 19.

Yajnavalkya.

We next come to the liberal rule of Yajnavalkya, as construed by the Mitakshara. That rule is contained in the text :—What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, or also any other separate acquisition is denominated "woman's property". The word "Adya" ("or the rest" or any other separate acquisition) has been held by Vijnaneswara to include property which a woman may have acquired by inheritance, purchase, partition, seizure or finding(*a*). This text has been the subject of much contention amongst the commentators. Jimutvahana and Jagannatha do not accept the reading of the Mitakshara (*a*). From this difference of reading flow very different effects. The passage, as quoted in the Dayabhaga, omits the words "आद्यं" (*Adyam*) upon which the author of the Mitakshara builds his theory that the word "*Stridhana*" includes property acquired by a woman by any of the recognized modes of acquisition including inheritance, and that the term *Stridhana* conforms in its

Mitakshara's gloss on the same.

(*a*) पितृमातृपति भ्रातृदत्तमध्यग्न्युपागतम् ।
आधिवेदनिकाद्यञ्च स्त्रीधनं परिकीर्त्तितम् ॥
Instead of "आधिवेदनिकाद्यं च" the Dayabhaga reads it as "आधिवेदनिकञ्चैव"

import with its etymology and is not technical.

Comment on the definition of Stridhana by the sages.

None of the sages whom we have quoted tell us in the abstract what *Stridhana* means. Its contents have to be gathered from several texts cited and others of a similar character. There is another difficulty ; none of them give an exhaustive enumeration of it. Some sages mention six kinds of *Stridhana*, others a larger number. Whether Vijnaneswara has not given to the text of Yajnavalkya a comprehension going much beyond the intention of the writer may reasonably be doubted (*a*). Indeed Viswarupa, the earliest commentator on Yajnavalkya, does not give the extended meaning to the text of Yajnavalkya as the Mitakshara does (*b*).

It remains now to examine how these Smriti texts regarding *stridhana* have been construed by the commentators and what is the tendency exhibited in the writing of each of them regarding "*Stridhana*." Of all the commentators the author of Mitakshara has been the most favourable towards women's proprietary rights. The prevailing tendency in his writings is to show that a woman may acquire

Mitakshara.

(*a*) See Messrs. West and Buhler's Digest of Hindu Law. 2nd. Ed. p. 425 where he gives reasons for this view.

(*b*) See Translation by Sitaram Sastri. 9, Madras. L. J. 423.

property in precisely the same way as a man and all property obtained by her in any mode of acquisition is without distinction *"stridhana."* Inheritance is not even excluded. There can be no doubt that Vijnaneswara wanted to extend the original sphere of *stridhana* property, and has in fact given an indefinite expansion to their proprietary capacity. He supports his theory by the text of Yajnavalkya, to which he gives the widest signification. Commenting on this text he says *(a)* : "That, which was given by the father, by the mother, by the husband, or by a brother ; and that, which was presented (to the bride) by the maternal uncles and the rest at the time of the wedding, before the nuptial fire ; and a gift on second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife let him give an equal sum as compensation for the supersession") ; *likewise as indicated by the word Adyam (etc.), property which she may have acquired by inheritance, purchase, partition, acceptance or finding ; all*

Vijnaneswara gives a wide signification to Yajnavalkya's text.

His comment on the said text.

(a) पिता माता पत्या भ्राता च यद्दत्तं यच्च विवाहकालेऽग्राधिकृत्य-मातुलादिभिर्दत्तं आधिवेदनिकं अधिवेदननिमित्तं अधिविन्नस्त्रियै दद्यादिति वक्ष्माण आद्यशब्देन रिक्थक्रयसंविभागपरिग्रहाधिगमप्राप्तमेतत् तु स्त्रीधनं नत्वादिभिरुक्तम्। स्त्रीधनशब्दश्च यौगिको न पारिभाषिकः योगसंभवे परिभाषाया अयुक्तत्वात्।

these descriptions of property are denominated woman's property; (by whom?) by Manu and the other ancient sages (*a*). The term (woman's property) conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper." The words in italics render it absolutely clear that "*Stridhan*", according to Vijnaneswara, means *property of any description belonging to a woman.* In this view Vijnaneswara is supported by a large number of commentators. Dr. Jolly cites the opinions of Kamalakara, Ballambhatta, Nanda Pandita, Rudra Deva and Apararka, all of which tend to confirm the theory of the Mitakshara (*b*). Vachaspati Misra, author of the Viramitrodaya, also follows Vijnaneswara in discarding the notion that the term "*Stridhan*" has been used in the text of Manu, Yajnavalkya and Vishnu in a technical sense, and not in the sense conformable to its derivation.

Vijnaneswara supported in his view by commentators.

Vachaspati Misra follows Vijnaneswara.

The Vyavahara Mayukha, after quoting the text of Manu regarding the "six fold

(*a*) The translation of the portion in italics by Mr. Colebrooke is not correct and has misled the Bombay High Court and Mr. Mayne. See on this point Dr. Jolly's Tagore Lectures, (1883), p. 244-247.

(*b*) Dr. Jolly's Tagore Lectures, (1883) Page 248-250.

peculiar property of a woman," remarks that the word 'six' is here used as exceptive of a less number. This interpretation harmonizes with the use of the word "Adya" in a text of Yajnavalkya" (*a*). From this it is not clear whether property acquired by inheritance, partition etc. is *stridhana*. But later on in the same chapter property taken by inheritance is ranked by Nilkantha as *stridhana*, but he draws a distinction between such stridhana and the *stridhana* of the less important kinds to which the special texts apply. After quoting the text of Katyayana : "But on failure of daughters the inheritance belongs to the sons," he says, "This right of inheritance of daughters and the rest in the mother's property exists only in respect of *adhyagni*, *adhyavahanika*, and other aforesaid kinds of technical *stridhan* ; for if it related to all wealth in which their mother had property, the technical term" "*stridhan*" would be nugatory" (*b*). The author of the Smriti Chandrika, though he cites the text of Yajnavalkya, does not give it the wide signification which the Mitakshara gives. On the other hand there occurs a passage

Vyavahara Mayukha on the text of Yajnavalkya.

Nilkantha recognizes property inherited by woman as stridhana,

but draws a distinction between such stridhana and technical stridhana.

Smriti Chandrika gives a restricted meaning to the text of Yaynavalkya.

(*a*) Nilkantha quotes the identical text of Yajnavalkya which has already been cited. Chap IV, Sec. 10. 1. *Stridhan*.

(*b*) Vyavahara Mayukha, Ch. IV. Sec. 10., 26.

in that treatise which suggests by implication that inherited property is not "*stridhana*." That passage is as follows :—"Whatever the mother takes, she takes for herself, *like* the *stridhana* called *Adhyagni* and the li.. and not for the benefit of both herself and her husband" *(a)*.

Vivada Chintamoni.

The Vivada Chintamoni does not refer to this much canvassed text of Yajnavalkya at all. It enumerates eleven kinds of the peculiar property of women (*stridhana*). They consist of the six kinds mentioned by Manu, the gift to a superseded wife noticed by Yajnavalkya, the *sulka* or woman's perquisite and the gift subsequent referred to by Katyayana, the ornaments including those which a woman was allowed to wear while her husband was alive although he might not have made a gift of it to her, and lastly the "food and vesture" spoken of by Devala.

Definition of stridhana given by Jimutavahana.

In the last place, we have to consider the definition of *stridhana* given by Jimutavahana, the founder of the Bengal School. After examining the various enumerations of the different kinds of *Stridhana* according to the different sages, he says, "since various sorts of the separate property of a woman have been thus propounded without any res-

(*a*) Smriti Chandrika, Ch. XI. Sec. 3, para 8 ; see also Sengamalathammal's case, 3 M. H. C. R. 312.

triction of number, the number six (as specified by Manu and others) is not definitely meant. But the text of the sages merely intend an explanation of woman's separate property. *That alone is her peculiar property which she has power to give sell or use independently of her husband.*" But this definition of *stridhan* has one great demerit. As no general rule is anywhere laid down as to what property a woman can dispose of independently of her husband's control, the foregoing definition is open to the objection that it defines one unknown thing in terms of another *(a)*. Srikrishna, the commentator of Dayabhaga, perceived this defect, and tries to improve a little upon it thus :—"That property is *Stridhana* in which the wife has independently of her husband, full power of disposal according to the sacred texts ; the text is that of Katyayana. The wealth, which is earned by mechanical arts, or which is received through affection from any other, but the kindred, is always subject to her husband's dominion. The rest is pronounced to be woman's property" *(b)*. Jimutavahana quotes the text of Yajnavalkya but omits the word

Defect of Jimutvahana's definition.

Srikrishna's definitiou.

(*a*) Tagore Lectures, 1878, Page 285-6 (2nd. Ed.)

(*b*) Srikrishna's Dayakramasangraha, P. 12. (Chandi Charan Smritibhushan.s Ed.)

"*Adyam*" on which the author of the Mitakshara builds his theory of female ownership. He gives a technical meaning to the word "*stridhana*" and refutes the notion that it includes the property acquired by inheritance (*a*). Speaking of the widow's succession, he quotes the text of Katyayana, "Let the childless widow, keeping unsullied the bed of her lord" etc., and then in commenting on it says :—" Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life ; and not as with her separate property *(stridhana)* make a gift, mortgage or sale of it at her pleasure" (*b*). A clear distinction is drawn in this passage between inherited property and *stridhan* by the Dayabhaga. On the contrary, it is equally clear that the author of the Mitakshara includes inherited property within the definition of *stridhan*. In these two leading treatises which embody the more modern development of Hindu law we find two contrary theories on the subject of woman's property. According to the rule laid down by the Judicial Committee in the case of

Comment of Jimutavahana on Katyayana's text.

(*a*) Dayabhaga, Ch. IV, Sec. I, 11 & 12 ; Chapter. XI, Sec. I, 58 ; Ibid, Sec. II. 30. 31.

(*b*) Ch. XI, Sec. I, 56-57.

Collector of Madura *vs* Mootoo Ramlinga Sathupathy, one would expect that inherited property would be regarded by the Courts as *stridhana* in tracts governed by the Mitakshara, while, in provinces where the influence of Jimutavahana prevails, the Courts would exclude it from the category of *stridhana*. Our expectations have been realized in the latter case but not in the former. So far as the Bengal school is concerned the judicial decisions establish the principle that property inherited by a woman either from a male or a female (*a*) does not become her *stridhana* and this is quite in accordance with the rule laid down in the Dayabhaga and Dayakrama Sangraha of Srikrishna.

Judicial decisions adopt the law laid down by Jimutavahana and Srikrishna.

On the other hand the course of decisions has been to hold, contrary to the doctrine of Vijnaneswara, that according to the law of the Benares school property inherited by a female is not her *stridhana*. In the leading cases of Thakoor Deyhee *vs* Baluk Ram (*b*) and Bhugawandeen *vs* Myna (*c*) the Judicial Committee have held that property inherited by a widow from her husband

Course of decisions is contrary to the doctrine of Vijnaneswara.

Judicial decisions.

(*a*) Sreenath vs Surbomongala, 10 W. R. 488; Prankissen vs Nayanmani, I. L. R. 5 Cal, 222; Huri Doyal vs. Grish Chandra, I. L. R. 17 Cal, 911.

(*b*) 11 M. I. A. 139.

(*c*) 11 M. I. A. 487.

Judicial decisions.

is not her *stridhana* according to the law of the Benares school. In the case of Chotayl-all *vs* Chunnoolall (*a*) property inherited by a daughter from her father has been held not to rank as *stridhana*. In Muttu Vaduganadha *vs* Dora Singha (*b*) the same principle was applied to cases in Madras governed by the Mitakshara law. Quite recently the Judicial Committee reaffirmed the principle of these decisions in these words :— "The law of inheritance in the case of women is left in great obscurity by the Mitakshara. The subject is dealt with in Chapter II, section 11 and has more than once been considered by this Board. The nature of a widow's estate was settled in two cases (Thakoor Deyhee *vs.* Baluk Ram and Bhugawandeen *vs* Myna) ; and the nature of a daughter's estate was considered in Chotaylall *vs* Chunnolal. It was there decided that under the law of the Mitakshara a daughter's estate is a limited and restricted estate and not *Stridhan*" (*c*). These were cases of inheritance from males. But the same principle has been recently extended to the case of inheritance from females

(*a*) I. L. R. 4. Cal, 744.

(*b*) I. L. R. 3 Mad., 290.

(*c*) Venkayyamma Garu vs Venkataramanayyamma, Garu, I. L. R. 25 Mad. 678. (P. C.)

in two recent appeals to the Privy Council from Allahabad (*a*). In the first of these cases (Sheosankar *vs* Debi Sahai) the Lords of the Privy Council in giving judgment said :—"Under the Benares law their Lordships are not aware of any direct judicial decision on the precise question now to be disposed of. But they do not feel any hesitation as to the answer which ought to be given to it. On the one hand stands the text of the Mitakshara, which, taken literally, seems to make all property inherited by a woman a part of her *stridhana*, inheritable from her according to the rules applicable to her *stridhana* in the strictest sense of the term. On the other hand, it has already been decided that the rule seemingly laid down in the Mitakshara as to the descent of property taken by inheritance is not the Benares law so far as concerns property inherited from males. The decisions to that effect were based upon no narrow grounds. Their Lordships examined the primitive texts upon which the Mitakshara purports to be based ; they considered the fundamental principles of the Hindu law ; they reviewed the judicial decisions bearing on the questions before them ; they gave such weight as

Property inherited by woman both from males and females governed by the same principle.

Sheosankar v. Debi Sahai, I. L.R. 25 All, 468.

(*a*) Sheosankar vs Debi Sahai, I. L. R. 25 All. 468 ; Sheopratab vs Allahabad Bank. Ibid, 476.