1864.
A. C. CA'MA'
v.
H. F. MORGAN.

of the case, is not reported further than this, that though the Court were of opinion that an assault in law had been committed, yet, having regard to the provocation given by the plaintiff, the nominal damages of one rupee only were awarded. The Court, therefore, reversed the decree of the District Judge, and awarded to the plaintiff damages one rupee: costs throughout to be borne by each party proportionately to the amount awarded.

1865.
Jan. 13.

Special Appeal No. 633 of 1864.

NAVALRA'M A'TMA'RA'M ..... *Appellant.*
NANDKISHOR SHIVNA'RA'YAN, deceased, by his brother Narotam Shivnáráyan ... *Respondent.*

Hindú Law—Stridhan—*Woman's Property*—*Married Woman's Inheritance.*

According to the Hindú law of inheritance as received in the Bombay Presidency, immoveable property inherited by a married woman from her father, whether or not it be strictly entitled to the name of *stridhan*, descends on her death to her own heirs, and not to her father's ascendants, according to what is called the "melancholy succession."

An inheritance descending on a married woman from her father classes as *stridhan*, and descends accordingly.

THIS was a Special Appeal against the decree of the Senior Assistant Judge of Broach.

Shántárám Náráyan for the appellant.

Reid, Dhirajlál Mathurádás, and *Nánábhái Haridás* for the respondents.

The appeal was heard by ARNOULD, Acting C. J., FORBES and WARDEN, JJ. The facts of the case are sufficiently disclosed in the following judgment of the Court, delivered by FORBES, J.:—

Umedrám, a person of the Súrati Shrímáli Bráhman caste, died, leaving a widow, a son named Nároshankar, and a daughter named Lalitá. Nároshankar died in his mother's lifetime, but Lalitá survived both her mother and her brother. Lalitá married Nandkishor, and had by him two daughters, one of whom, named Rukshmaṇi, survived her. Navalrám, the plaintiff in this action, is the judgment-creditor of Harishankar, the husband of Rukshmaṇi; and Narotam, the defendant, is the brother of Lalitá's husband,

Nandkishor. Navalrám sues to obtain a declaration of Harishankar's title to a house in the City of Broach, and some *wajifá* land in the neighbourhood, together with the rents thereof, now in the possession of the defendant Narotam.

The cause was originally tried in the Court of the Ṣadr Amín of Broach, A'zam Harilál Ambáshankar, and the finding of that Judge was substantially as follows:—that Lalitá's heir was not her husband, Nandkishor, but her daughter, Rukshmaṇi; that Rukshmaṇi's heir was Himatrám, her son; and that Himatrám's heir was his father, Harishankar, the plaintiff Navalrám's judgment-debtor. The Ṣadr Amín, therefore, made a decretal order declaratory of Harishankar's right both to the immoveable property and to the rents which were the subject of the claim.

The defendant Narotam brought this decision before the Senior Assistant Judge of Broach (W. M. Coghlan) in appeal. Mr. Coghlan differed entirely from the view of the case which had been taken by the Ṣadr Amín; he laid down the following propositions:—that, according to the Hindú law, immoveable property acquired by inheritance cannot be *stridhan*; that, therefore, Lalitá received the property of Umedrám as heir at law, and that the said property was not her *stridhan*; and that on Lalitá's decease the estate of Umedrám did not descend to the daughters of Lalitá, but passed in the order of what is termed, in Hindú law, "the melancholy succession," to Umedrám's ascendants. The Senior Assistant Judge on these grounds dismissed the claim advanced by Navalrám on behalf of Harishankar, and reversed the decree of the Ṣadr Amín with costs.

The plaintiff, Navalrám, now makes a special appeal to this court, and it is argued on his behalf that the Senior Assistant Judge has laid down the Hindú law wrongly, when he determines that the property which a woman inherits from her father is not her *stridhan*; that the property which Lalitá inherited from Umedrám was *stridhan*, and as such descended from Lalitá to her daughter Rukshmaṇi, and that Himatrám was the heir of his mother, Rukshmaṇi, and Harishankar the heir of his son Himatrám; that even if the property inherited by Lalitá from Umedrám be denied to be *stridhan*, it would still pass to her daughter Rukshmaṇi,

1865.

NAVALRA'M A'TMA'RA'M v. NANDKISHOR SHIVNA'RA'YAN.

Lalitá having left no son, and no claim being pretended on behalf of Lalitá's husband, Nandkishor; but the case for the opposite party being that the property ascends in the order of the "*melancholy succession*," and finally that the Senior Assistant Judge should have followed the customs of the Shrímáli Bráhman caste as regards inheritance, which, as judicially determined by the Sadr Amín, are in favour of the descent of property inherited by a female to her heirs, and not of its ascent to her husband's ascendants.

To this the defendant, Narotam, replied by attempting to controvert the position that immoveable property inherited by a female from her father is her *stridhan;* and by urging that even if Umedrám's estate be held to have become Lalitá's peculiar property, still it would not descend to Harishankar, because a daughter of a daughter cannot inherit. It was also urged on the part of the defendant, Narotam, that if the claim was not preferred within twelve years from the date of Lalitá's death it would be barred by the law of limitation, and that the courts below had given no finding upon this point.

The important text of Manu on the subject of a woman's *stridhan* or peculiar property is the 194th *shloka* of the ninth chapter:—

"What was given before the nuptial fire, what was given on the bridal procession, what was given in token of love, and what was received from a brother, a mother, or a father, are considered as the six-fold *separate* property of *a married* woman." (Sir William Jones's Works, Vol. VIII., p. 34.)

The doctrines of Manu are not to be too much relied upon at the present time as establishing points of law, it being universally admitted by learned Hindús as well known that many of them have no force in the "*Kali* age." It becomes necessary, therefore, to inquire what the commentators have held in interpreting the text above quoted. The authors of the Mitákshará and the Vyavahára Mayúkha are those whose authority commands the greatest respect on this side of India.

The comment of the Mitákshará is as follows:—"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 (as paternal uncles, maternal aunts, &c.) at the time of the wedding, before the nuptial fire, and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, and also property which she may have acquired by inheritance, purchase, partition, seizure, or finding, are denominated, by Manu and the rest, 'woman's property.'"*

Further on, the commentator explains that the enumeration of six sorts of woman's property by Manu, in the text quoted, is intended not as a restriction of a greater number, but as a denial of a less, and para. 7 of the same chapter runs thus :—

"It is said by Kátyáyana, '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 her father.' It is celebrated as woman's property: for this passage is connected with that which had gone before."†

The author of the Mitákshará would appear, therefore, to hold that property received (or inherited) by a woman from her father after her marriage is woman's property.

The opinion of Nilakantha, the author of the Mayúkha, appears to be the same. His remark on the text of Manu is this :—

"*Sixfold* is here used in order to prevent [its reduction to] a smaller number, a [position] which is borne out by the word 'other' in the following text of Yajnyávalkya : '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 on her supersession, as also any *other* [separate acquisition], is denominated a woman's property". Vishnu likewise specifies more (than those six) : 'What has been given to a woman by her father, her mother, her son, or her brother; what has been received by her before the nuptial fire; what has been presented to her on her husband's espousal of another wife;

*Mitákshará on Inheritance, Ch. II. Sec. XI., para. 2, Colebrooke's Translation, p. 365.

† *Ibid.*, p. 367.

1865.

NAVALRA'M A'TMA'RA'M v. NA.SDKISHOR SHIVNA RA'YAN.

what has been given to her by kindred, as well as her perquisite, and a *gift subsequent*, are a woman's separate property;' and he adds, 'what has been received by a woman at a time subsequent to her marriage, from the family of her husband, is called a *gift subsequent*, and so is that which has been similarly received from her own family."*

After describing what he considers to be "woman's property," the author of the Mitákshará goes on to explain how it descends. The appropriate text to our present purpose is the following:—

Para. 12. "In all forms of marriage, if the woman 'leave progeny,' that is, if she have issue, her property devolves on her daughters."†

"The right of succession after a woman's decease to that (part of her) private property which is entitled a 'gift subsequent' is thus settled by Manu: 'What she received after marriage from the family of her husband, and what her lord may have given her through affection, shall be inherited, even if she die in his lifetime, by her children.' The term 'children' has been thus explained by the same author: 'on the death of the mother let all the uterine brothers, and the uterine sisters, equally divide the maternal estate.'"‡

The term "gift subsequent" includes, as has been already shown, that which the woman has received from her own family after her marriage.

Jagannáth, the author of the Digest which has been translated by Mr. Colebrooke, quotes the text from Manu, and the following remark upon it, from the Retnákara: "Sixfold is mentioned to except a less, not a greater, number; for a present given to a superseded wife, which is another sort of separate property held by a woman, is also mentioned by Yajnyávalkya."§

Jagannáth's own opinion appears to be that this remark

* Vyávahára Mayukha, Ch. IV., Sec. 10, pp. 2, 3, Borradaile's Translation, pp. 118, 119.

† Mitákshará, Ch. II., Sec. XI., para. 12, Colebrooke's Translation, p. 368.

‡ Mayúkha, Ch. IV., Sec. X., para. 13, Translation, p. 124.

§ Digest, Colebrooke's Translation, Bk. V., Ch. IX., Sec. I, para. ccccl.xii.

by the author of Retnákara is not required, inasmuch as a liberal interpretation of Manu's text will comprehend within it every sort of woman's separate property.

He seems to hold that property which a woman inherits from her father is not *stridhan*, in the strict sense of that term, but that it is subject to the control of her husband so long as he lives. He draws a distinction between what is given to a woman and what is inherited by her, and considers the former only to be *stridhan*. Inherited property, according to this commentator, belongs to both husband and wife, and in case of the death of the wife in the lifetime of the husband the husband's title is lost, and the property passes to the legal heir of her father, as it would do on the death of the wife did she survive her husband.*

Sir Thomas Strange remarks in reference to "stridhan:" "Of the property in question, it is most commonly said, with reference to the married, that there are six descriptions, but the authorities do not concur as to the precise number, and a good deal of reasoning has been employed in discussing, without satisfactorily determining, whether this number, most generally adopted, is to be taken restrictively of a larger, or only as exceptive of a less."†

Sir Thomas Strange himself enumerates twelve descriptions of "stridhan," of which the eleventh is—"Property which a woman may have acquired by inheritance, purchase, or finding, what has been inherited by her being so classed by Vijnyáneshvara, whose authority prevails in the peninsula; while it is otherwise considered by the writers of the Eastern school."‡ And in the volume of "Responsa Prudentum" is the case of a woman who, having succeeded to the landed property of her father by right of inheritance, objected to the alienation thereof by her husband, in which case the Pandit of the court was clear that her husband has no power to dispose of any part of the land so descended without her consent. The following remark was made upon this case by Mr. Colebrooke: "Here the married daughter inherited in default of male issue, widow, or unmarried daughter: Miták. on

* See remarks on the texts of Kátyáyana, Digest, Sees. cccclxx. and cccclxxv.

† Strange's Hindú Law, Vol I., p. 28.

‡ *Ibid.*, p. 31.

1865.
NAVALRA'M ATMA'RA'M v. NANDKISHOR SHIVNA'RA'YAN.

Inh., Ch. II., Secs. 2, 3, &c. Her husband was precluded from using his wife's property, unless for the performance of some indispensable duty, or in circumstances of distress: *Ibid.*, Sec. XI., 32.* And as to the descent of woman's property the same author says: "According to the Mitákshará and its followers, property which the widow may have acquired by inheritance is transmissible to her own heirs, classing with this school as part of her *stridhan*,"† the general rule as to *stridhan* being that if it belong "to a married woman, whether she die, living her husband, or a widow, the immediate heirs to it, including personalty inherited from her husband, with land also according to the Mitákshará, are her lineal descendants in the female line."‡

Mr. Justice Strange, in his Manual, remarks that "*stridhan* embraces property of every description obtained by the female, by gift from her husband, or her own or his relations, by inheritance, seizure (taking that which belongs to no one), or discovery;"§ and again: "property vesting in a female descends first to her daughters, the unmarried having preference over the married, and the unendowed over the endowed; then to her daughters' daughters, daughters' sons, sons, and sons' sons."‖

Sir William Macnaghten remarks that "in the Mitákshará, whatever a woman may have acquired, whether by inheritance, purchase, partition, seizure, or finding, is denominated woman's property, but it does not constitute her *peculium*."¶

It must be observed, however, that the author of the Mitákshará expressly guards against the supposition that he employs "woman's property" as a technical expression. He says: "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."**

* Strange's Hindú Law, Vol. II., p. 22. † *Ibid.*, Vol. I., p. 248.

‡ *Ibid.*, Vol. I., p. 249.

§ Strange's Manual of Hindú Law, Ch. V., Sec. 145.

‖ *Ibid.*, Ch. XI., Sec. 354.

¶ Macnaghten's Principles and Precedents of Hindú Law, Ch. III., p. 38 (ed. of 1829).

** Miták. on Inheritance, Ch. II., Sec. 11, para. 3, Colebrooke's Translation, p. 365.

"To such property," says Macnaghten, speaking of *stridhan*, "left by a married woman given to her by her father, but not at the time of her nuptials, the heirs are successively a maiden daughter, a son, a daughter who has or is likely to have male issue, daughter's son," &c.*

According to all the authorities that have been examined above, with the exception of the Eastern school represented by Jagannáth, the author of the Digest, and which is of little authority on this side of India, it would appear that property inherited by a married woman from her father, whether or not it be strictly entitled to the name of *stridhan* or *peculium* (which Sir William Macnaghten does not admit), descends on her death to her own, and not to her father's heirs; or, to apply the law to the circumstances of this particular case, that Rukshmani, the only surviving child of Lalítá, was the lawful heir to the property which descended from Umedrám to Lalítá.

It is contended, however, on the part of the defendant Narotam, that the law, as interpreted in Gujaráth, is exceptional. The authority for this argument is a statement by Bhálchandra Shástri, in a note at the foot of page 69 of Steel's Summary of the Law and Custom of Hindú Castes within the Dakhan provinces subject to the Presidency of Bombay, to the following effect: "The Shástris in Gujaráth do not include property inherited by women among *stridhan*."

The usage of the country in which the suit arose takes precedence of the law of the defendant in our courts; indeed, if such an exceptional local usage as that contended for could be shown, it would no doubt be binding upon us. But Bhálchandra Shástri's opinion can hardly be accepted as proof of a local usage, nor, if it were, would it be in this instance conclusive, because all that the Shástri says is that inherited property is not *stridhan*, which we might admit, without also being compelled to admit that in the case supposed of a woman inheriting property from her father, surviving her husband, and leaving a daughter surviving her, the property inherited by her from her father would necessarily go to her father's heirs, and not to her daughter. The plaintiff, Navalrám, is, however, able to produce better evidence of what is really

* Macnaghten's Principles and Precedents of Hindú Law, Ch. III. p. 39.

1865.
NAVALRA'M A'TMA'RA'M v. NANDKISHOR SHIVNA'RA'YAN.

the local usage on the subject. Mr. Borradaile, the translator of the Vyavahára Mayúkha, was employed, A.D. 1827, in collecting information regarding the customs of the Hindú castes in Súrat, by putting questions to the accredited heads of the castes and recording their answers. This work has always been considered to be peculiarly valuable. Customs are with difficulty collected by a court of justice from witnesses, all of them more or less interested in the fate of the dispute for the settlement of which the custom requires to be ascertained. Mr. Borradaile's work, on the contrary, is a body of preconstituted evidence. It is especially useful in a case like the present, where the point at issue is, which of two opposite readings of Hindú law should be received as applicable to a particular locality now. The following is one of the answers which were given to Mr. Borradaile by the caste of Súrati Shrimáli Bráhmans:—

"If a woman inherits moveable or immoveable property from her father and dies childless, that property reverts to the father's family, but if she leaves a daughter the latter is the heir."

Therefore, according to the usage of the caste to which she belongs, which usage is in accordance with the Hindú law, as interpreted by the authorities which are of most weight in the Bombay Presidency, Rukshmaṇi, the only daughter of Lalitá, is the heir to the immoveable property which Lalitá inherited from her father, Umedrám.

The argument of the defendant Narotam, that Rukshmaṇi cannot inherit the property of her grandfather Umedrám through her mother, Lalitá, because a daughter's daughter is not in the line of inheritance, requires some notice. The Senior Assistant Judge, Mr. Coghlan, relied upon a passage in Sir T. W. Macnaghten's work on Hindú law, and another in the work of Sir Thomas Strange. The former is as follows:—"Upon the death of a daughter inheriting immediately from her father the estate shall go to the son, but never to the daughter's daughter." The latter runs thus:—"According to one opinion, not only the sons of daughters, but the daughters of daughters also inherit, in default of sons; but this does not appear to have been sustained: on the other hand, where there are sons, their right of succession is postponed

to other daughters of the deceased; and that, where such sons are numerous, when they do take, they take *per stirpes*, and not *per capita*. Authorities postponing still further their right have been denied; but the succession in the descending line from the daughter proceeds no further, the funeral cake stopping with the son; which is an answer to the claim of the son's son grounded on the property having belonged to his father. Neither, according to Jimúta Váhana, on failure of issue, does the inheritance, so descending on the daughter, go, like her *stridhan*, to her husband surviving her, but it goes to those who would have succeeded had it never vested in such daughter; but, according to the Southern authorities it classes as *stridhan*, and descends accordingly."* Several other quotations to a like effect were made on behalf of the defendant Narotam, of which the most important is the following:—

"Under no circumstances can a daughter's son's son or other descendant, or her daughter or husband, inherit immediately from her the property which devolved on her at her father's death; such property, according to the tenets of all the schools, will devolve on her father's next heir, and will not go, as her *stridhan*, to her own heir."†

The work of Sir T. W. Macnaghten is of more authority in the Bengal Presidency than it is on this side of India. We have already considered the remarks of Sir Thomas Strange, and have come to the conclusion that the interpretation adopted by the Southern authorities alluded to by him is the interpretation which is applicable between the parties in the present suit, and that an inheritance descending on a daughter classes as *stridhan*, and descends accordingly. Sir William Macnaghten also, in the passage quoted from him, apparently had under his consideration only such property as was not *stridhan*. Very shortly before the passage quoted, he alludes to the doctrine of the Southern authorities, mentioned by Sir Thomas Strange, that property devolved on a daughter by inheritance is classed as *stridhan*, and descends accordingly, and remarks upon it that "the authority cited for this doctrine is to be found in that part of the Mitákshará treating of

* Strange's Hindú Law, Vol. I., pp. 139, 140.

† Macnaghten's P. & P. of Hindú Law (Madras edition, 1865), p. 25.

1865.

NAVALRA'M A'TMA'RA'M v. NANDKISHOR SHIV-NA'RA'YAN.

woman's peculiar property, and consequently applies to the descent of that alone. I have not been able to meet with any other;"* and afterwards† he alludes to a Bombay case in which, on the death of a widow, it was decided that her daughter was not entitled to succeed as heir, inasmuch as property which had devolved on a widow reverts at her death to her husband's heirs. But this case, which is to be found in Strange, Vol. II., pp. 404-406, related to property which was not *stridhan*, but "the share allotted as a provision to the widow," that is, received by her as maintenance out of her husband's estate. Therefore, Sir William Macnaghten's remark, which the defendant Narotam relies upon, does not apply to the present case.

The only point which remains to be noticed may be soon dismissed. It is contended by the defendant Narotam that if the present claim was not brought forward within twelve years from the death of Lalitá the action would be barred by the new law of limitation, and that the lower courts have not given a decision on this point. But it is a sufficient answer to this argument to say that if the defendant Narotam desired to rely upon a defence of limitation founded upon any argument derived from the date of Lalitá's death, it was his part to have proved what that date was, which he has not done.

It was ordered by the Court that the decree of the Senior Assistant Judge be reversed, and that of the Sadr Amín confirmed, with costs against the special respondent, Narotam Shivnáráyan.

* Macnaghten's P. &. P. of Hindú Law, p. 22, *in notis*. † *Ibid.*, p. 23.