

The *karkun*, if he made a false report to the Subordinate Judge, or gave false evidence before the Magistrate, is punishable otherwise; but, not being the complainant, he also is not liable to have the payment of compensation awarded against him under Section 209 of the Criminal Procedure Code.

The Court reverses the order of the Magistrate, which directed that Keshav Lakshman should pay Rs. 5 to Abá valad Krishná as compensation.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 829 of 1873.

Appeal No. 288.

MURA'RJI GOKULDÁ'S AND OTHERS (ORIGINAL DEFENDANTS, APPELLANTS) March 25.
v. PA'RVATIBÁ'I (ORIGINAL PLAINTIFF, RESPONDENT).

Hindu Law—Inheritance—Blindness—Disqualification to inherit.

According to the Hindu law, as prevailing in the Bombay Presidency,* blindness, to cause exclusion from inheritance, must be congenital.

Therefore where the widow of a childless intestate, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind,

Held that such blindness did not prevent her from inheriting the property of her husband on his decease.

GOKULDÁ'S VITHALDÁ'S died intestate and without issue in the year 1873, leaving him surviving his widow Sakerbái, who, though not born blind, had been totally blind for some years before his death, and his sister Párvatibái, the plaintiff. Sakerbái died some two or three months after her husband, having, about a week previously, made a will, whereby she bequeathed certain Government promissory notes and money, which had been the property of her husband, to the defendants, as trustees and executors, to be applied in the trusts of her will. After the death of Sakerbái, Párvatibái, claiming as the heir of Gokuldás Vithaldás, sued the defendants for possession of the Government promissory notes

* *Note.*—In *Mohesh Chunder Roy v. Chunder Mohun Roy* (14 Beng. L. R. 273) it was held that the Hindu Law as prevailing in the Bengal Presidency is similar.

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 1st, that Sakerbái, being blind at the time of the death of her husband, was, under the Hindu law, incapable of inheriting from him ; and, 2nd, that the alleged will of Sakerbái was a forgery. The suit was originally tried before Bayley, J., and occupied several days in the hearing, a considerable amount of evidence being given on both sides. Finally, the learned Judge, being of opinion that the will was a forgery, directed it to be impounded, and passed a decree in favour of the plaintiff, without recording any decision on the point of law as to whether Sakerbái's blindness operated as a bar to her inheriting the property of the deceased. From this decree the defendants appealed.

The appeal was argued before WESTROPP, C. J., and SARGENT, J., on 17th and 18th December 1875 and 14th and 15th January 1876.

Scoble (Advocate General) and *Badrudin Tjabji*, for the appellants, on the point of law contended that blindness to bar inheritance must be congenital.

Latham and *Lang*, for the respondent, argued that blindness existing at the time that the inheritance should vest, was a bar, whether congenital or not.

The authorities cited appear in the judgment of the Appellate Court. The question of the genuineness of the will of Sakerbái was, of course, also fully argued ; but, being one that depended entirely on the facts and evidence, need not be considered here.

Cur. adv. vult.

On March 25th, 1876, the following judgment on the point of law was delivered by

WESTROPP, C.J. :—The subject matter of this suit consists of Government promissory notes and money in the hands of the defendants which in the lifetime of Gokuldás Vithaldás belonged to him. He died at Porebunder, without issue, in June, 1873. Párvati, the plaintiff, as his alleged heir, sues to recover the property in question. The defendants rely upon a will, alleged to have been made at Porebunder by Sakerbái, the widow of Gokuldás Vithaldás, on the 24th of August 1873. Sakerbái died

on the 2nd of September 1873. She appears to have become blind some time previously to the death of her husband. One of the points relied upon on behalf of the plaintiff Párvati, before us at the hearing of the appeal, was that Sakerbái's blindness disqualified her for inheriting from her husband, and, therefore, that her will, even if genuine, could not affect the property in dispute. Mr. Justice Bayley, having decided in favour of the plaintiff Párvati upon another ground, did not give any opinion on this question as to the competency of Sakerbái to inherit.

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It is admitted that Sakerbái's blindness was not congenital. It supervened in comparatively recent years as she advanced in life, but in the lifetime of her husband, and, upon the evidence, we think that she must be regarded as totally blind at the time of his death. The question, therefore, for solution is, whether total blindness, not congenital, prevents the person so afflicted from inheriting.

Manu, the chief of the Rishis, and of whose high authority at this side of India there cannot be any doubt, (see the remarks of Sausse, C. J., in *Pránjivandás Tulsidás v. Devkuvarbái*)⁽¹⁾ in Chap. IX, pl. 201, of Sir W. Jones' Translation by Haughton, says :—" Eunuchs,⁽²⁾ and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage." This text is also to be found in Jagannátha's Digest, Vol. III, Bk. V, Ch. V, pl. cccxxix. Commenting upon it, Jagannátha commences with a reference to the doctrine of the Retnakara, which expounds the text by remarking that, " by the mention of birth the legislator (Manu) suggests the incurableness, not the origin, of the blindness." Jagannátha says of that exposition :—" The meaning is, as persons afflicted by a hopeless malady must be supplied with food and raiment, so must he who is afflicted by incurable blindness and so forth." We should here observe that the Retnakara, though of authority

(1) 1 Bom. H. C. Rep. 130; see p. 131.

(2) Rendered by Colebrooke in his translation of the Mitákshara, Ch. II, S: X, pl. 3, and by Borradaile in his translation of the Mayukhá, Ch. IV, S. XI, pl. 3, " impotent persons". So, too, by Prosonno Coomar Tagore in his translation of the Viváda Chintámáni, p. 242.

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in Maithila, is not so in this Presidency. Jagannátha does not accept its non-natural exposition of the text of Manu as correct. Referring to that exposition he says:—"That is not the opinion of Calluca Bhatta, for he expounds the text thus:—'Eunuchs, fallen sinners, persons born blind or devoid of the sense of hearing, madmen, those who support not the performance of duty, and such as are deprived of speech.' Calluca Bhatta's commentary is much valued in this Presidency. Jagannátha adds that "Jimuta Vahana says the word 'born' is conncted both with 'blind' and with 'deaf'" (see to that effect the Dáya Bhága, Ch. V, pl. 7, 9). Jagannátha continues:—"In expounding the text of Devala above cited (cccxxi)", (hereinafter mentioned,) "he (Jimuta Vahana) says 'blind' signifies born blind; for this coincides with the expression 'born blind or deaf' in the text of Manu. In practice the succession of one who becomes deaf in the course of his life occurs, even though the deafness be incurable: the same is also proper in a case of blindness. Consequently the term must be understood as signifying one born blind, or born deaf"; and Jagannátha subsequently observes: "'such as have lost the use of a limb' not such as have lost any organ generally, (for that would include a vain repetition of the terms blind and deaf); but such as have lost the use of some one limb; for example, wanting the use of a hand or of a foot. The repetition of 'blind' and the rest may be supposed by the same rule by which two names of kine are at once employed in a general and particular sense. 'Wanting the use of a foot' in effect signifies lame." Srikrishna Tarkalankara in the Dáya Krama Sangraha, Ch. III, after quoting the text of Manu, says:—" 'Born blind and deaf'. That is by nature, and not those who have become so from some adventitious cause: the meaning, therefore, is those who are blind and deaf from the period of their birth."

In the same (3rd) volume of the Digest, Bk. V, Ch. V, pl. cccxxx, Jagannátha, as translated by Mr. Colebrooke, gives the following text of Yájnyavalkya, another of the Rishis of great authority:—"An outcast and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he who is afflicted by an incurable disease, must be maintained without any allotment of shares." Váchaspati Misra, in the Viváda Chintámani, as

translated by Prosonno Coomar Tagore, gives the same text thus :—“ An outcast and his son, an impotent person, one lame, a madman, an idiot, one born blind, he who is afflicted with an incurable disease, and the like, must be maintained without any allotment of shares.” In both of these readings it will be observed that the word “ born ” precedes “ blind ”, and neither of the translators uses italics to indicate that the word “ born ” is his interpolation. It is, therefore, reasonable to assume that in the Sanskrit MSS., from which Jagannátha and Váchaspati Misra thus quoted, the text contained the word “ janma ” or some similar word, signifying “ born ” or “ from the birth ”. We unfortunately have not, at present, access to Sanskrit copies of the Digest or Viyáda Chintámani to which we can refer in order to ascertain how the fact is, viz., whether or not the translators only are responsible for the word “ born ”. Even, however, if, as is quite possible, the use of that word is imputable to them only, it is of great importance that they, and more especially Mr. Colebrooke, should have conceived the true meaning of the word “ blind ” to be “ born blind ”. Colebrooke’s invariable practice, so far as we know, was to denote, by italics, or brackets, words which were not in the original text and which were introduced by himself. He has, in translating the text of Devala, which we shall presently quote *in extenso*, introduced the word “ born ” in italics before the word “ blind ”. Possibly the word “ born ”, used by him in rendering the text of Yájnyavalkya, may have been intended to be in italics, and its appearance in Roman type may be the error of the printer—a supposition, which, it might be argued, is to some extent supported by Jagannátha’s commentary on the same text, where he says :—“ ‘ Blind ’ signifies born blind. So the Dipacalicá ”. He then, however, adds :—“ It should be here remarked that the term, ‘ lame ’ being contiguous to the word ‘ blind ’ must signify born lame. In like manner ‘ persons deprived of the use of their hands ’ must signify such as are destitute of the use of both hands from the day of their birth.” It is difficult to conceive how the mere contiguity of the word ‘ lame ’ to the word ‘ blind ’ could indicate that ‘ lame ’ meant born lame, unless ‘ blind ’ was, in the MS. of the original text used by Jagannátha, conjoined with ‘ born ’ or ‘ from the birth ’. That it

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was so, is supported by the text as given in the translation of the Vivāda Chintāmani, which we have quoted. The manuscript of Yājnyavalkya, used by the authors of the Mitākshara, Mayukha, Dāya Krama Sangraha, and Smṛiti Chandrika, would seem to have contained the word 'blind' only; for the translators do not, in rendering the same text as quoted in those works, introduce the word 'born'. Roer and Montriou also, in their translation of Yājnyavalkya, p.46, omit the word 'born'.

Another Rishi of high authority, Nārada, in speaking of persons disqualified for inheritance, says:—"One afflicted with an obstinate or an agonizing disease, and one insane, blind or lame from his birth, must be maintained by the family; but their sons may take the shares of their parents." We take this reading of the text from Jagannātha's Digest as translated by Colebrooke, Vol. 3, Bk. V, Chap. V, pl. cccxx, cl. 2. Jagannātha, whilst giving to this reading of Nārada's text the preference, mentions, in his commentary upon it, that there is a different reading of the same text. He says:—"Insane from his birth, it is hereby intimated that one who subsequently becomes insane from the pernicious power of mineral drugs, or the like, is not excluded, any more than one who subsequently becomes blind or lame. In the Vivāda Chintāmani the text is read 'idiot (jāda), insane, blind or lame' instead of 'insane, blind or lame from his birth (janma)'; 'idiot' is there explained 'one who is incapable of discrimination.'" In Prosonno Coomar Tagore's translation of the Vivāda Chintāmani (pp. 244, 245) the author, Vāchaspati Misra, is represented as quoting Nārada thus:—"Those of the family who are afflicted with long and painful disease, an idiot, one who is insane, blind or lame, should be maintained, but their sons are partakers of the inheritance. Vāchaspati Misra's commentary upon that text is:—"Long disease means consumption and the like." But Srikrishna, in the Dāya Krama Sangraha, Ch. III, pl. ii, speaking of the same text, says:—"Long"—that is, from the period of birth." In the Sanskrit version of Nārada given by West and Bühler, Vol. I, p. 347, texts 21, 22, and in their translation, *Ibid.* p. 354, pl. 21, 22, the blind are not mentioned amongst the persons excluded from inheritance, nor is the phrase "born" or "from the birth" associated with any of those

persons, nor does the term "nirindraya" occur in that version. Those remarks are true also with regard to the version of the same texts of Nārada as given in Mr. Burnell's translation of the Dāya Vibhāga of the Madhaviya, p. 39, pl. 49, and in the translation of the Smṛiti Chandrikā of Kristnasawmy Iyer, p. 61, pl. 5.

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Devala's text on this subject, as translated by Colebrooke in 3 Dig., Bk. V, Ch. V, pl. cccxxi, is:—"On the death of a father, or other owner of property, neither an impotent man, nor a person afflicted with elephantiasis, nor a madman, nor an idiot, nor one *born* blind, nor one degraded for sin, nor the issue of a degraded man, nor a hypocrite or impostor, shall take any share of his heritage." The word "born" is in italics, and, therefore, is the interpolation of the translator. That translator being Mr. Colebrooke, it is important to know that a scholar, so eminently competent, understood Devala, in referring to blindness as a disqualification, to mean congenital blindness only.

In the same volume, book, and chapter of the Digest is the following text of Baudhāyana (cccxxviii):—"persons incapable of transacting business, blind men, idiots, those who are immersed in vice, or afflicted by incurable diseases, and *even* those who neglect their duties, (but not the degraded, nor their issue,) let the heirs supply with food and apparel." Of this text Jagannātha says (*inter alia*) "'blind men', persons born blind."

Neither Gautama nor Vasishta mentions the blind amongst the persons disqualified for inheritance. See 1 West and Bühler, p. 326, pl. 41 and p. 334, pl. 27, 28; 3 Dig., Bk. V, Ch. V, pl. cccxxxv, cccxxxviii.

Sir Thomas Strange⁽¹⁾ discusses disabilities to inherit, and after saying that "exclusion from inheritance, with the Hindu, rests, in general, upon the same principle with succession to it; *i.e.*, it is connected with the obsequies of the deceased; from their incapacity to perform which the excluded are incompetent as heirs," proceeds first to mention "idiots, madmen, the deaf, the dumb, the blind, the lame, and the impotent." Speaking of these he says (p. 153):—"And it is only where these infirmities are coeval with birth that the disability attaches: though Jagannātha seems

(1) 1 Str. H. L. Ch. 7, pp. 152 *et seq.*, Edn. of 1830.

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to make the case of the madman an exception in this particular; and of the impotent (who is also excluded,) it is said, by a sensible author, to be indifferent whether he is naturally so or by castration." * The passage in Jagannátha's Digest, to which Sir T. Strange refers as showing that Jagannátha was of opinion that insanity is an exception to the general rule that the deficiency must be congenital, is at the commencement of his commentary on a text of Vishnu (cccxxvi) in Vol. III, Bk. V, Ch. V, page 314, where in speaking of certain diseases he says that they may proceed "from the pernicious effects of drugs; but if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of Nárada (cccxx 2)⁽¹⁾. It is the same of one who becomes insane in the course of his life." Unless this remark as to insanity be strictly limited to such an aberration of intellect as is clearly proved by the assertors to be the result of an atrocious crime, or of sin in the highest degree, a proposition at all times extremely difficult, if not impossible, to establish, Jagannátha must be regarded as flatly contradicting himself; for, continuing the same commentary on the text of Vishnu (cccxxvi, Vol. III, p 315), he, referring to the text of Devala, already mentioned, says:—"A madman' in the text of Devala (cccxxi) signifies one insane from his birth, for the import is the same with that of the text of Nárada (cccxx 2). Raghunandana explains 'idiot' one who cannot support the performance of duties: others explain the term, void of understanding. 'Blind' signifies born blind; for it coincides with the text of Nárada." With this latter conclusion, and not at all with the former, the text of Nárada (cccxx, cl. 2), as already quoted from the Digest, and Jagannátha's own remarks upon the texts of Manu, Yájnyavalkya, Baudháyana, and Nárada, which remarks we have already given, appear to be consistent. We should here mention that in *Baboo Bodhnarain Sing v. Baboo Omrao Singh*⁽²⁾ it seems to have been admitted on both sides that lunacy, supervening before the descent of the property, prevented inheritance. Sir James Colvile, in giving the judgment of the Privy Council, said⁽³⁾ that the point was not argued either before their Lordships or

(1) See also 3 Jag. Dig., Bk. V, Ch. V, pl. cccxxv.

(2) 13 Moore Ind. Ap. 519.

(3) *Id. Ib.* 523.

in the Court below, so the Privy Council gave no opinion upon it. The sensible author, to whom Sir T. Strange refers for the opinion as to the disqualifying effect of supervening impotence, is Bálambhatta, whose sex and whose estimation here are not such as to confer upon the opinion much weight⁽¹⁾. That view seems, however, to have been also expressed by the author of the Prakása, but is combated by Jagannátha, who says it "is questionable : for as one who becomes blind in the course of his life ought to share the heritage, so ought one who becomes impotent." We do not gather from the remarks of Sir T. Strange that he was of opinion that the exceptions of lunacy and impotence suggested by Jagannátha and Bálambhatta ought to be recognised, although he deemed it right to mention what these writers said on the subject. Howsoever that may be, neither he nor they suggest that blindness, deafness, and lameness are exceptions to the general rule that infirmities to disqualify for inheritance must be congenital.

In the Mitákshara, Ch. II, S. X, pl. 3, Vijnyáneshvara quotes, without a word of disapprobation or dissent, the text of Manu already mentioned. The word 'nirindraya' in that text, which Sir William Jones has rendered "such as have lost the use of a limb", Mr. Colebrooke has in his translation of the Mitákshara rendered thus "those who have lost a sense [or a limb]". The learned counsel for the plaintiff have relied on the next passage, plac. 4, which is: "Those who have lost a sense [or a limb]. Any person who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb" [nirindraya], and contend that it would include blindness which supervened as well as congenital blindness. No doubt the term 'nirindraya' standing alone may indicate the loss of a sense, organ, limb, or member. We must depend upon the context to discover which of these meanings the Rishi intended it to bear. Seeing that Manu had already in the same text made express provision for the impotent, the blind, the deaf, the dumb, the insane and the idiotic, we are strongly inclined to think that by 'nirindraya' he intended to provide for those who were deficient in a limb or

(1) See 1 West and Bühler, *Introd.*, pp. v-vi; 7 *Bom. H. C. Rep.* 168 and *Id. Ib. Appx.* pp. vi-vii.

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member, and that Sir William Jones correctly interpreted his meaning. And we are strongly fortified in that conclusion by finding that it is that also of Váchaspati Misra in his Viváda Chintámani. Commenting on the text of Manu, he says:—
 “Those who have lost the use of a limb signifies those who have been deprived of a hand, a leg, or any other member of the body. Such persons are not competent to perform ceremonies relating to the Vedas and Smriti. They are consequently not entitled to inherit paternal property”⁽¹⁾.

But, even assuming that Manu meant by ‘nirindraya’ to indicate deficiency in a sense, organ, limb, or member, we think that, in including deficiency in a sense or organ, he must thereby have meant deficiency in a sense or organ not already provided for, and that we should give a forced and unnatural construction to his language if we were to hold that, after expressly providing that congenital blindness or deafness should disqualify, he meant by ‘nirindraya’ that blindness or deafness from any cause should have the same effect. The rule *expressio unius, exclusio alterius*, might be properly applied, and would thus leave the phrase ‘nirindraya’ in the text of Manu and the 4th placitum of Sec. X, Chap. II of the Mitákshara to operate, not only where there is a deficiency of limb or member, but also a deficiency of any sense or organ not expressly provided for by Manu. We are not, however, to be understood as deciding that a deficiency in any sense or organ is in those passages implied in the word ‘nirindraya’ as employed by Manu in Ch. IX, pl. 201, or anything more than that he is not by that term to be understood as referring to deficiency in any sense or organ for which deficiency he had already specially provided.

Nilakantha, in the Mayukha, Chap. IV, S. XI, quotes, amongst other texts, that of Manu, without contradicting or qualifying it, but with this remark: that, as to the words “have lost a sense (nirindraya)”, they mean “deprived of the nose or the like”. The translator, Mr. Borrodaile (possibly following the Smriti Chandriká Ch. V, pl. 61) after the word “nose”, adds in a parenthesis “or smell”, but that is merely conjectural. Assuming, however, that he be right, it would not interfere with our view

(1) Viváda Chintámani translated by Prosonno Coomar Tagore, p. 243.

that blindness, deafness, or any other deficiency specially provided for by Manu in the same text does not fall within the term 'nirindraya' as used by him. But it is hardly probable that, if supervening deficiency in the more valuable senses of sight or hearing, or in the organ of speech, or in the reasoning faculty, were not permitted by Manu to work disherison, he regarded a deficiency in the minor senses of taste, touch, and smell as sufficient to produce that effect.

Váchaspati Misra, in the Viváda Chintámani, quotes, as we have mentioned, the same text of Manu, and without in any wise qualifying, contradicting, or objecting to the word "born".

The three books of chief authority in Western India are Manu, the Mitákshara, and Mayukha. Of these Manu is express on the point that blindness, to disqualify for inheritance, must be congenital. He is quoted and not contradicted by the Mitákshara, Mayukha, and Mahadaviya⁽¹⁾, and is expressly supported by Nárada and also by Yajnyavalkya, if the reading of his text be correctly given by Jagannátha and Mr. Colebrooke. Manu is also supported by Jimuta Vahana and Jagannátha, the authority of whom, respectively, stands higher in Bengal than here. Sir Thomas Strange and Mr. Colebrooke we understand as holding that disqualifying blindness must be congenital.

We now proceed to advert to the decisions:

There are two cases in Borrodaile's Reports on the effect of blindness as a cause of disherison. In neither does it appear whether or not the blindness was congenital. In the case of *Duce v. Poorshotum Gopal*⁽²⁾ a widow who was blind was held disqualified, but it is not stated whether she was blind from her birth. In the case of *Ruvec Bhudr Sheo Bhudr v. Roopshunker Shunkerjee*⁽³⁾ the appellant was stated to be both blind and deaf, but it is not said whether he had been so from his birth, and the case seems to have been decided against him upon different grounds.

The authorities cited by the Shástri at page 284 of 1 West, and Bühler do not support his answer there given to question No. 1.

(1) Burnell's translation of *Dáya Vibhága*; p. 39, pl. 49.

(2) 1 Bor. 453, Edn. of 1862.

(3) 2 *Id.* 713. See p. 727, Edn. of 1862.

1876. Those authorities are the Mitákshara and Mayukha, both of which, as we have seen, quote, without disapprobation, Manu's text, requiring that blindness to disinherit must be congenital. Question 2, at page 285, does not state whether the blind man there mentioned was blind from his birth. The Shástri denied that he could be dispossessed. We have consulted our brother West with reference to the remark made by him and Dr. Bühler upon that question and the Shástri's answer to it, in which remark they say that, "if the man was blind at the time the inheritance would have devolved upon him, that circumstance would act as a disqualification".

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Our brother West says that, taking the literal reading of the Mitákshara as their guide, he and his learned colleague felt bound to give the sense of 'andha' in Yájnyavalkya's text as 'netren-driya vikalam'; *i.e.*, deficient in the organ or sense of sight as in Manu, Ch. VIII, pl. 93, where the same word occurs. But he observes that 'andha' in itself may as well mean congenitally blind as deprived of sight by disease or accident, and that, if a harmony of the Smritis is to be attained by adopting the fuller expression of Manu as quoted by Vijnyáneshvara himself, 'born blind' is the preferable translation for 'andha' in Yájnyavalkya's text. He adds that, in the passage of Nárada on this subject, given at 1 West and Bühler, p. 347, and translated at p. 354, the insanity which excludes is, (as already mentioned by us,) according to some MSS, congenital; according to others, it is not specified to be so. The Vyavahára Mayúkha in Ch. IV, S. XI, pl. 3, he observes, gives the less liberal reading of the same text in Nárada, but the other (that given by Jagannátha) stands probably on as good authority. He continues: This text (according to the reading in 1 West and Bühler, 347, 354) does not exclude the blind at all, if taken by itself, and, even as to the other disqualifications, the various readings which occur in it, as in the other Smritis touching on this subject, make it unsafe to rely on it as excluding the condition 'from birth'. He says:—That condition occurs with reference to blindness in the text of Manu as quoted in the Mitákshara and in the Mayukha, and being accepted by Vijnyáneshvara without qualification may properly be used to explain the sense in which he used the words 'deficient in the

sense of sight'. The commentator on Yájnyavalkya was, according to the accepted notion of his office, constrained to interpret the language of every other Rishi in subordination to his own master; but Yájnyavalkya himself, as quoted in the Mayukha, Ch. I, S. I, pl. 12, furnishes the rule by which a Court of justice should be governed:—"If two texts differ, reason must in practice prevail."

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In connexion with the foregoing observations with which our brother West has greatly assisted us, and with the attainment of harmony amongst the Smritis which he suggests, we may, perhaps, refer with advantage to the text of Vrihaspati (3 Dig., pl. cccxxxiii, p. 323):—"Manu holds the first rank among legislators, because he has expressed in his code the whole sense of the Veda; no code is approved which contradicts the sense of *any law promulgated by Manu.*" We are not to be understood as maintaining that, on questions of Hindu Law, the latter portion of this text is universally true; but upon a question as to which the Smritis vary so much as that of disqualification for inheritance, we think that the pre-eminence assigned by Vrihaspati to Manu should not be forgotten.

To question 6, at page 288 of 1. West and Bühler, viz., can a dumb or a madman claim the property of his ancestors, or does his claim extend to a maintenance only?—the Shástri in replying said:—"If a person is mad or dumb from the time of his birth he cannot claim the property of his ancestors, though he may claim a maintenance from it." The Shástri appears to have been clearly of opinion that the insanity or dumbness which disqualifies must be congenital.

The Smriti Chandriká, Chap. V., pl. 9, as translated by Krishna-sawmy Iyer, in its exposition of the text of Vishnu, says:—"Hence it must be understood that such as appear *at the time of division* to have been afflicted with impotence, &c., are excluded from their shares, and that the exclusion is not confined to those only that are *naturally* (that is by birth) impotent or the like." The Smriti Chandriká, however, is not a book of authority in this Presidency; and, even in Madras, where it is much regarded, we find that the High Court of that Presidency has, in *Tirumamagal*

1876. v. *Rāmasvami*⁽¹⁾, held that idiotcy to disqualify must be congenital. And, as we have pointed out, the Mahadaviya, which is of high authority in Madras, quotes the text of Manu, Ch. IX., pl. 201, without any mark of dissent or disapprobation.

MURAJI
GOKULDA'S
v.
PARVATIBAI.

In *Vallabhram v. Bai Hariganga*⁽²⁾ it has been ruled that dumbness, to disqualify for inheritance, must be congenital, and accordingly the Court directed an issue as to whether the widow, there claiming to inherit, had been dumb from her birth.

Upon the best consideration that we have been able to give to this question we are of opinion that there is a considerable preponderance of authority in favour of the conclusion that blindness, to cause exclusion from inheritance, must be congenital.

We, therefore, hold that Sakerbai's blindness did not prevent her from inheriting the property of her husband Gokaldas Vithaldas on his decease upon the 24th August 1873.

The other questions in this case will now be disposed of by my brother Sargent on behalf of us both.

SARGENT, J., then delivered the judgment of the Appellate Court on the questions of fact; and the will of Sakerbai having been found to be a genuine document, and its execution not to have been procured by fraud or undue influence, the decree of the Court below was reversed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 305 of 1875.

February 2.

VALAJI ISAJI AND OTHERS (PLAINTIFFS AND APPELLANTS) v.
THOMAS (DEFENDANT AND RESPONDENT).

*Registration Act VIII. of 1871, Section 17, Clauses 2 and 3; Section 18, Clause 7—
Acknowledgment of receipt of consideration.*

J. T. passed a writing to V., under date the 28th April 1874, stipulating that the deed of sale of J. T.'s bungalow to V., for Rs. 4,300, which was to have been made that day, owing to certain circumstances therein mentioned, should be made and delivered by J. T. to V. 20 days thereafter. The writing further acknowledged the receipt, by J. T. from V., of Rs. 100 as earnest money for the purchase

(1) 1 Mad. H. C. Rep. 214.

(2) 4 Bom. H. C. Rep. 135 A. C. J.