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and that the effect of reputed ownership under the Bankruptcy Acts is a special consequence of express provisions in those statutes. This money, therefore, having been wrongly realized by the defendants, must be refunded to Bhagvandas.

We reverse the decree of the District Judge in so far as it modifies that of the Subordinate Judge, and restore the latter, with costs throughout on defendants.

APPELLATE CIVIL.

(16)

Before Mr. Justice West and Mr. Justice Pinhey.

BALAKRISHNA TRIMBAK TENDULKAR (ORIGINAL DEFENDANT No. 2),
APPELLANT, v. SAVITRIBAI (ORIGINAL PLAINTIFF), RESPONDENT.*

September 25.

*Hindu Law—Relinquishment of Share by Son—Inheritance—Private
Arrangement—Widow.*

The effect of a Hindu son relinquishing for a sum of money his share in the property of his father, natural or adoptive, and agreeing not to claim it during or after his father's life-time, is to place him in the position of a separated son. The relinquishment does not amount to disinheritance. If, therefore, the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow.

A son by birth or adoption can for adequate reasons be disinherited, but the course of devolution prescribed by the law cannot be altered by a private arrangement; on the disinheritance of the son, the son's son becomes his grandfather's lawful heir.

THIS was an appeal from the decision of Rav Bahadur Vishnu Moreshvar Bhide, Subordinate Judge, First Class, of Thana, at Nasik.

One Govind Tendulkar owned certain moveable and immoveable property at the village of Rewas, in the Alibag Taluka of the Thana District. The plaintiff Savitribai is his daughter. Having no son, Govind adopted Trimbak, (defendant No. 1 in the Court of first instance,) who was the adoptive father of Balkrishna, defendant No. 2, and appellant in the High Court.

* Appeal No. 1 of 1878.

The misconduct of Trimbak gave rise to a misunderstanding between him and Govind, which culminated in the latter giving to the former a sum of Rs. 1,000, and taking from him in 1862 a *farkat* [deed of separation], exhibit No. 3, by which, in consideration of the receipt of this money, Trimbak "relinquished his share in the property of Govind, and agreed not to claim it in Govind's life-time or after his death." In the year 1872 Trimbak adopted the appellant Balkrishna, at Govind's expense, and with his cognizance and consent. In the latter part of the same year, Govind died intestate, leaving behind him his widow Radhabai, his daughter Savitribai (the plaintiff), and the two original defendants, Trimbak and Balkrishna. On the 11th of June 1875, Radhabai executed to Savitribai a deed of gift professing to alienate all the property, moveable and immoveable, belonging to her deceased husband, Govind. Under this deed the plaintiff sued the defendants to recover possession of the property from the defendants, of whom Trimbak died after the institution of the suit.

It was contended, among other things, for the appellant that, even supposing the deed of gift to have been genuine, it was invalid and of no effect; as, notwithstanding the relinquishment by Trimbak of his share, he inherited Govind's property on his death.

The Subordinate Judge was of opinion that Govind's widow was Govind's heir, and holding the deed of gift proved, he passed a decree in favour of the plaintiff.

Kashinath Trimbak Telang, with *Shantaram Narayan* and *Ghanasham Nilkanth Nadkarni*, for appellant.—The question is, who is Govind's heir, his widow or Balkrishna, either as the adopted son of Trimbak or independently in his own right as grandson of Govind, who, it is admitted, died intestate. To determine this we have to consider what is the effect of the *farkat* (exhibit No 3). By this, Trimbak gave up to his father his right to a share in his property. He was not entitled to more than his share: so that Govind might, if he had chosen, have made any alienation of his property before his death. In fact, he placed himself in the position of a separated son. But, Govind having died without making any alienation, his separated son became his heir in preference to his widow and after him his adopted son Balkrishna: West and Bühler

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(2nd ed.), 90, Q. 6. The general words by which Trimbak relinquished his share, should be so construed as to limit them to things in special contemplation of Govind and himself at the time of the execution of the *farakat*: *The Directors of the London and South Western Railway Company v. Blackmore*.(1) But, assuming that the Court puts the widest construction upon the general words of relinquishment, yet they do not deprive Trimbak's right as heir to his father: *Mt. Udey Kunwar v. Mt. Ladu and others*.(2) These cases depend on the principle that an heir's right attaches to property, unless the testator has validly devised it in favour of another. Even disherison by itself is not sufficient to deprive the heir of its rights without an appropriation of the property: *Tagore v. Tagore*. (3) And, even independent of Trimbak, Balkrishna succeeds as heir to his grandfather Govind.

Macpherson, with him *V. M. Pandit*, for the respondent, contended that by the deed of relinquishment (exhibit 3) Trimbak had given up all present and future rights in consideration of Rs. 1,000.

WEST, J.—Trimbak, the adoptive son of Govind, by receiving a sum of money in lieu of his share of the estate and by his execution of the document No. 3, placed himself in the position of a devided son with reference to his adoptive father.(4) The community of property between them was thus severed, and had Govind alienated his estate, Trimbak could not legally have interfered with the transaction. And, on this right, according to the extension given to the Hindu law by the Courts in recent times, there followed a right to dispose of the property by will.(5) Had Govind, therefore, bequeathed his estate to Radhabai or the plaintiff Savitribai, the bequest would have^d taken effect. But, in the absence of such a bequest or other exercise of the uncontrolled power vested in Govind, the succession to his estate must still be governed by the provisions of the Hindu law. That law, according to the case at West and Bühler, p. 90, assigns the

(1) L. R. 4 H. L. 610.

(3) 9 Ben. L. R. 377.

(2) 6 Ben. L. R. 283.

(4) West and Bühler (2nd ed.) 308.

(5) *Ibid* 302; *Tagore v. Tagore*, 9 B. L. R., at p. 397; see East's Notes No. 75, 2 Morl. Dig. 133.

inheritance to even a separated son in preference to a widow. Her right in the familiar text of Yajnavalkya arises only when her husband has died sonless.(1) The text and the decision upon it have not before us been met by any authorities to the contrary, and we must, therefore, reverse the decree of the Subordinate Judge, based on the ground that Radhabai, and not Trimbak, was Govind's heir. The heirship was a legal consequence of Trimbak's *status* with regard to Govind, casting on him, at Govind's death, the right correlative to his own obligation under the *farkhat* (exhibit No. 3), and which could not be got rid of by any agreement. See the case of *Ruvvee Bhudr v. Rupshankar and others*.(2) The course of devolution prescribed by the law could not be altered by a private arrangement—*Wiltes' Claim of Peerage*,(3) *Buckhust Peerage*,(4) *In re Wilcock's Settlement*,(5) *Vynior's Case*,(6) Lord Brougham in *Keppel v. Bailey*,(7) quoted in the notes to Spencer's Case,(8) *Tagore v. Tagore* (9)—though no doubt Trimbak, like a son by birth, could for adequate reasons have been disinherited.(10) In such a case Trimbak's son would be the proper successor, that is, the present defendant Balkrishna, but for Trimbak's disqualification (11) at the time of his adoption. All that could be done was to enlarge Govind's powers, should he choose to exercise them to the prejudice of him who would still, as to any residue left undisposed of, be the heir. The suit in this case is not brought on a transaction *inter vivos* or a testamentary bequest, but simply on the widow's right of succession, which could not come into existence when a son, divided or undivided, survived Govind.

Costs throughout to be borne by the respondent.

Decree reversed.

(1) Mayukha, c. IV, s. viii, p. 2; Mit., c. II, s. 1, para. 2; Stokes' Hindu Law, pp. 83 & 427.

(2) 2 Borr. 713 at p. 729.

(3) L. R. 4, H L. 126.

[4] L. R. 2 App. Ca., 1.

[11] West and Buhler [2nd ed.] 278; 1 Str, H. L. 159; 2 *Ibid.* 129; See also *Tagore v. Tagore*, 9 B. L. R. at p. 409-410.

(5) L. R. 1, Ch. D., 229, *per* Jessel, M. R.

(6) 8 Co. Rep. at 81 b.

(7) 2 M. & K. 517.

[8] 1 Sm. L. C. 74.

[9] 9 B. L. R., p. 394.

[10] West and Buhler, 272, 278, 879.