tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

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"An annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E or to the like effect."

No such notice was given in this case; therefore, the annual tenancy has not been determined.

The result is that the decree must be confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

SUNDRABAI JAVJI DAGDU PARDESHI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHIVNARAYANA RIDKARNA (ORIGINAL PLAINTIFF), RESPONDENT.*

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SHIVNARAYANA RIDKARNA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SUNDRABAI JAVJI DAGDU PARDESHI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu Law—Mitakshara—Mayukha—Marriage—Samskara—Marriage of a coparcener—Family purpose.

According to Hindu law a debt contracted for the marriage of a coparcener in a joint Hindu family is binding on the other coparcener as a debt contracted for a family purpose and, therefore, for the benefit of he family.

Govindarazulu Narasimham v. *Devarabhotla Venkatanarasayya* (1) dissented from.

Under the Mitakshara as well as the Mayukha the word "Samskara" ordinarily includes marriage.

* Appeals No. 755 of 1906 and No. 299 of 1907.

(1) (1903) 27 Mad. 206.

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CROSS-APPEALS from the decision of C. Fawcett, District Judge of Ahmednagar, reversing the decree passed by H. A. Mohile, Joint Subordinate Judge at Ahmednagar.

Suit to recover money by sale of the property mortgaged.

The property belonged originally to one Javji Dagdu, who died leaving him surviving his two minor sons, Gulab and Keshav, and their mother Sundrabai. In May 1884 Sundrabai was appointed guardian of the minors' property and person under Bombay Act XX of 1864, which was then in force.

On the 15th June 1892 Sundrabai borrowed Rs. 585 from the plaintiff's father and on the same day passed a deed mortgaging the joint property of the minors. The sum borrowed was spent in the expenses of the marriage of her minor son Gulab, which took place on the 18th June 1892. To this mortgage no sanction was obtained by Sundrabai as required by section 29 of the Guardians and Wards Act (VIII of 1890). Gulab died some time after the marriage.

The plaintiff brought this suit to enforce the mortgage against Sundrabai and her son Keshav.

Defendant No. 1 (Sundrabai) contended that she was not entitled to the house mortgaged and that the suit was barred by limitation.

It was contended by Keshav *inter alia* that Sundrabai had no right to mortgage the property; that there was no necessity for borrowing the money; that he and his brother Gulab did not get any benefit from the mortgage money; and that the debt did not create a charge on the property.

The Subordinate Judge found that Sundrabai had passed the mortgage deed for valuable consideration; that the transaction embodied in the deed was not legally binding on Keshav, as no sanction of the District Court was taken under section 29 of the Guardians and Wards Act, 1890, and that therefore no relief could be granted to the plaintiff.

The plaintiff appealed. The learned Judge remanded the case to the Subordinate Judge for determination of the following issue :—

"Did defendant 2 or his deceased brother Gulab receive any benefit from the plaintiff's father under the mortgage bond, and if so, to what extent?"

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In remanding this issue the learned Judge observed :—

"The appellant relied on the rulings in *Sinaya* v. *Munisami* (I. L. R. 22 Mad. 289) and *Tejpal* v. *Ganga* (I. L. R. 25 All. 59) as entitling the mortgagee to a charge on the mortgaged estate to the extent of the consideration for the mortgage received by Sundrabai. These rulings are based on section 64 of the Indian Contract Act, under which the defendant 2, when rescinding this mortgage, as he is entitled to do, "shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

The finding of the Subordinate Judge on the remanded issue was that defendant 2 did not receive any benefit from the plaintiff's father under the deeds, but that his deceased brother Gulab did receive benefit to the extent of Rs. 585 under it.

The district Judge held accordingly that there was a legal obligation on defendant 2 as legal representative of Gulab, to restore Rs. 585 to the plaintiff, so far as he can do so, out of any assets or property derived be him from Gulab.

Both the parties referred cross-appeals against this decree.

D. W. Pilgaonkar, for the defendants :—As Sundrabai was a guardian appointed by the Court, the mortgage executed by her without sanction of the Court (section 29 of the Guardians and Wards Act VIII of 1890) is void. The minor is, therefore, entitled to repudiate the transaction on attaining his majority. See *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand*[1]. A guardian cannot contract a debt for the marriage of his ward without the sanction of the Court. Section 64 of the Indian Contract Act (IX of 1872) does not apply because the minor's marriage is not a benefit to him. Bhattacharya in his Hindu Law, p. 81, says, according to Manu, marriage of a minor is a sin. It is not a necessary *samskara*.

D. A. Khare, for the plaintiff :—Under Hindu Law marriage is an obligatory *samskara* and therefore the mother was under a legal necessity to borrow for the expenses of marriage. The shares of both the brothers are bound by the act of the mother acting as a guardian.

(1) (1894) 20 Bom. 61.

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CHANDAVARKAR, J.:—The questions of Hindu Law, raised in these two second appeals from a decree of the District Court at Ahmednagar, depend upon certain facts which, as they have been found by that Court, are as follows:—

One Javji Dagdu died, leaving him surviving as his heirs two minor sons, Gulab and Keshav, and their mother, Sundrabai. On his death Sundrabai was appointed guardian of the minors' property and person in may 1884 under Bombay Act XX of 1864, which was then in force. On the 15th of June, 1892, Sundrabai borrowed Rs. 585 from the plaintiff Shivnarayan's father, Rid Karna, for the expenses of the marriage of her minor son Gulab, and executed in his favour a deed, mortgaging the joint property of the minors, which they had inherited from their father. No sanction, however, was obtained by her for the mortgage, as required by section 29 of the Guardians and Wards Act. The amount borrowed was spent on the marriage of Gulab. He, however, did some time after the marriage.

The plaintiff brought the suit, which has led to these two second appeals, to enforce the mortgage against Sundrabai as defendant 1 and Keshav as defendant No. 2.

The District Court has held that, though the mortgage is void under section 29 of the Guardians and Wards Act as against Sundrabai, it would be voidable as against the two brothers, Gulab and Keshav, under section 30 of the same Act; that under section 64 of the Indian Contract Act, which virtually corresponds to section 35 of the Transfer of Property Act, Gulab and Keshav would be liable to restore any benefit they might have received from the mortgage transaction before avoiding it. This view of law has not been impugned before us by either party.

The District Court has found that, so far as Gulab was concerned, he received a benefit from the transaction, because the money borrowed was spent for his marriage; that, therefore, he became liable to restore the benefit by repaying the money to the

plaintiff; and that this liability of his devolved on his death on his half share in the joint property, obtained by his brother Keshav (defendant No. 2), by survivorship.

Upon this finding the District Court has passed a decree for the sum with interest against Keshav (defendant No. 2), and directed that, in case of failure by him to pay within 6 months from the date of the decree, the plaintiff should recover it by sale of the half share of the deceased in the property specified in the mortgage-deed, which has come to defendant No. 2 by survivorship, and also from any other assets, if any, of Gulab in the hands of the said defendant.

It is contended for defendant No. 2 in his second appeal (No. 755) that this decree is erroneous in law. The argument is that when Gulab died, the whole of the joint property came to the latter by survivorship and that there was no half or other share of Gulab left which could be responsible for Gulab's liability, since a coparcener has never any determinate share in coparcenary property till partition. This argument loses sight of the effect which the mortgage effected by Sundrabai had on the coparcenary relations of the two brothers. Its effect, according to the Hindu Law prevailing in this Presidency, was to give an interest to the mortgagee in the joint family property to the extent of the share of the mortgagor and to entitle him to have that share determined by partition even after the mortgagor's death: *Rangayana Shrinivasappa* v. *Ganapabhatta*[1]. The mortgage was indeed voidable by Gulab; but if he received any benefit from it, he could not have avoided it without restoring that benefit to the mortgagee. When he died, his liability devolved on his share in the property. So far, therefore, as the second Appeal preferred by Keshav, defendant No. 2, is concerned, it must fail.

The plaintiff in his second appeal No. 299 of 1907 complains that the District Court ought to have held that the marriage of Gulab was a family purpose, and that defendant No. 2 is as much personally liable to restore the benefit as Gulab was. This raises the important question whether, according to Hindu Law, a debt

(1) (1891) 15 Bom. 673.

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contracted for the marriage of a coparcener in a joint Hindu family is binding on the other coparceners as a debt contracted for a family purpose and, therefore, for the benefit of the family.

According to a text of Yajnyavalkya, cited and expounded in the Mitakshara, and a text of Brihaspati quoted in the Vyavahara Mayukha, in a joint Hindu family, consisting of several brothers, of whom some have and others have not had their sacramental ceremonies (*samskaras*) performed by their father during his life-time, the former are bound to get those ceremonies performed in respect of the latter out of their joint property. (The Mitakshara, Stokes' Hindu Law Books, page 398, Plac. 3, section VII; the Vyavahara Mayukha: Rao Saheb Mandlik's Translation, page 48, lines 23 to 26.) To the same effect is a text of Narada:—"For those (brothers) for whom the initiatory ceremonies have not been duly performed by their father, they must be performed by the (other) brothers (defraying the expense) from the paternal property." (See the Narada Smriti in the Sacred Books of the East, Volume 33, page 197, section 33.)

In all these texts, the original word used for "ceremonies" is *samskara*. Doctor Jolly, in a note to the translation of Narada's text, observes that "there appears to be some doubt as to what is meant," in the said text, "by the term *samskara*, initiatory or sacramental ceremonies, some commentators including the ceremony of marriage in that term, and others declaring the initiatory ceremonies to terminate with the investiture with the sacred thread." So far as the Mitakshara and the Vyavahara Mayukha, which are the principal governing authorities on Hindu law in this Presidency, are concerned, there is nothing expressly stated in either to show that the word *samskaras*, which ordinarily includes *marriage* must be understood in the sense of excluding it in the interpretation of the texts in question. On the other hand, the context in which Yajnyavalkya's text is given in the Mitakshara, and Brihaspati's text is given in the Vyavahara Mayukha, implies that marriage was meant to be included in the word. The former text is a hemistich immediately followed by another, which relates to the marriages of sisters. After quoting the text of Brihaspati as to brothers, Nilakantha in the Vyavahara Mayukha quotes another text of the same *Rishi*, which

rates both to brothers and sisters, and the text of Yajnyavalkya relating to sisters in particular. In all these, the word used for "ceremonies," whether as applied to brothers or to sisters, is *samskaras*. In the case of sisters, it can have no meaning if marriage be excluded from it. And if marriage is included in the use of the word with reference to sisters, it must be understood as having been used in the same sense with reference to brothers also, since both brothers and sisters are mentioned in the same connection and the same word is used as to both. Logically speaking, this mode of interpretation of the texts would no doubt render it necessary that the word *samskaras* should be understood as also including the thread ceremony with reference not only to brothers but also sisters. So it would have been but for special texts, which expressly prohibit the thread ceremony in the case of females* and confine it to males, whereas there is no text which likewise prohibits marriage in the case of males. Hence the word *samskaras* (sacramental ceremonies) occurring in the text abovementioned means all such ceremonies as are, according to the Shastras, applicable to males where the question is about males, and all such ceremonies as are applicable, according to the same Shastras, to females where the question is about females.

This interpretation has the sanction of some commentators, whose authority is of weight in this Presidency, though it is not equal to that of the Mitakshara and the Vyavahara Mayukha. For instance, Apararka, in his commentary on the Yajnyavalkya Smriti, quotes the same text of Yajnyavalkya which Vijnaneshwara has quoted and expounded in the Mitakshara, and explains that the *samskaras* referred to in the text mean "the *Jata Karma* and other ceremonies".(1). Now, these can be no other than the ceremonies or rites which begin with *Jata Karma* and the last of which is marriage. These are explained by Colebrooke

* Vijnaneshwara points this out in his exposition of *Smriti* No. 15 of Yajnyavalkya, in Chapter II on *Brahmachari*, section on *Achara* (Rituals), (page 5 of Bapu Shastri Moghe's Edition of the Mitakshara, 3rd Edition). See also Apararka, page 908, Anandashrama Series, where a *Smriti* of Manu is cited to show that *marriage* takes the place of the thread ceremony in the case of women. There is a *Smriti* of Yama to the same effect, quoted by Nilakantha in the Samskara Mayukha.

(1) See *Apararka*, Anandashrama Series, page 731.

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in his Digest on text 134, Chapter III, Book V (pages 301 and 302). Balambhatta in his commentary on the Mitakshara quotes the same text and says that the *samskaras* referred to by Yajnyavalkya are "the rites which end with marriage"[1]. So also a *Smriti* of Vyasa, quoted at page 78 of Vivadarnava Setu[2], says that "where there are several brothers, some of whom have had their sacramental ceremonies performed by their father, these on his death should perform the same ceremonies in *their consecutive order* in respect of the other brothers" out of the paternal estate. "In their consecutive order" means all the sacramental ceremonies, one after the other in succession. That must include marriage. In the Madana Parijata, Yajnyavalkya's text regarding the duty of an *initiated* brother to perform the sacramental ceremonies of his *uninitiated* brother is quoted and the explanation is added that the word *asamskrita* used by Yajnyavalkya means "uninitiated in the *samskaras* (sacramental ceremonies) which end with marriage." (The Madana Parijata, Bibliotheca Indica Series, page 648.) Medhatithi in his commentary on Manu quotes the same text of Yajnavalkya and explains that the principle underlying it is that it is the father's "*right*" to perform the marriage ceremony of his son; and that in the absence by death or otherwise of the father, the right devolves on that son's elder brothers who supply the father's place. Medhatithi's reasoning is this. It is true, he says, that all the ceremonies up to and including the thread ceremony of a son must be performed by his father and that in respect of them the son is absolutely dependent on the latter; but though for the subsequent ceremonies there is not the same state of dependence, yet since the father in respect of the first ceremony (*jat karma*) has to recite the *mantra* which is:—"Though this is called my son, he is myself," the father has *power* or *right* as to the marriage also of the son and all other rites. Hence, says Medhatithi, the text of Yajnyavalkya, which makes it the bounden duty of the initiated brothers to bring about the

(1) See the manuscript copy of the Commentary, which is in this Court, page 143. Also Stokes' Hindu Law Books: Note to para. 4, page 398.

(2) The reference is from an edition of this work published by the Shri Venkateshwar Press, Bombay.

samskaras of their uninitiated brothers out of the patrimony, on the father's death. (See Ráo Sáheb Mandlik's edition of the *Mánava Dharma Shástra*, pages 119 and 120.) The word used by Medhatithi for *righi* is *adikára*, which, according to certain *sutras* of Panini[1], involves the idea of authority with obligation, subject, of course, to discretion.

The Madras High Court in *Govindarazulu Narasimham* v. *Devarabhotla Venkatarazayya*[2], on which the respondent's pleader in this second appeal before us relies, has held otherwise. According to that decision, in a joint Hindu family, consisting of a father and several sons, the marriage of any of the sons by the father is not, according to Hindu Law, a family purpose, because there is no moral or religious obligation on either the father or the coparcener, or, in the event of the father's death, on that coparcener's brothers, to bring about his marriage. With all deference to the learned Judges (White, C. J., and Moore, J.), who have held so, I venture to think that the decision rests upon a misapprehension of the texts on which they have relied in their judgment, of the law expounded by Vijnaneshwara in the Mitakshara and by the author of the Smriti Chandrika, and, lastly, of the principles underlying and the practice obtaining in the joint Hindu family system.

First, it is not correct to say, as the learned Judges have said in their judgment, that "nowhere is marriage in the case of a male included among the initiatory ceremonies" and that "there is a complete absence of authority for the proposition that omission to perform the ceremony of marriage in the case of a male Bráhman entails a forfeiture of his caste or status." The question whether marriage is a necessary and obligatory ceremony or is only optional in the case of a male is discussed by

(1) The *sutras* are: *adhirishware, swaritena, adhikára, anabhihite* Medathithi gives an illustration of his meaning of the word *adhikára* (page 384 of Ráo Sáheb Mandlik's edition of the *Mánava Dharma Shástra*) Accordingly, the words *adhikára* and *ishwara* are synonymous and mean "power." See West and Bühler's *Digest* 3rd edition, page 232, where *ishwara* is translated as "power" and the learned authors of the *Digest* point out that it has a more comprehensive sense than that of "active authority" and implies a duty as well.

(2) (1903) 27 Mad. 206.

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Vijnaneshwara in the chapter of the Mitakshara on "The Duties of a Hermit" (yati), the last of the four *ashrámas* orders of life) prescribed in the *shástrás* for a male of any of the three twice-born castes (see pages 309 and 310 of the Mitakshara published by Bapu Shastri Moghe, 3rd edition). There Vijnaneshwara deals with the different views of the *smriti* writers on the subject. The four *ashrâmas* or orders of life are (1) the celibate or student (*brahmáchárin*), (2) the householder (*grihastha*), (3) the hermit (*vanaprastha*), and (4) the ascetic (*yati* or *sannyási*).

Now, there are, as pointed out by Vijnaneshwara, three schools of Hindu religion and law, representing three different views on the question whether all or any of these *ashrámas* are compulsory. For a clear apprehension of the discussion it is necessary to bear in mind at the outset the starting principle of the Hindu *shástrás* and of the Hindu law-givers and their commentators that no Hindu shall remain an *unashrámi* (one belonging to none of the four prescribed orders of life) "even for a single day."(1) And if a Hindu remain an *unashrámi*, he forfeits his *status* as a member of his caste, so much so that, on his death, no funeral ceremonies can be performed in respect of his soul.(2) According to Jabala, all these four orders of life are optional in the sense that one may enter from one of them into the other order consecutively or become an ascetic without having entered into the order of the householder or of the hermit. The school represented by Jabala is designated *the school of option* (*vikalpa-paksha*) by Vijnaneshwara.

The second school is headed by Gautama and is called *the school of exclusion* (*badhapaksha*), because it excludes the last two *ashrámas* or orders of life. Gautama declines to recognize the last two orders and declares that the only *ashráma* or *status* of life allowable is that of the householder (*grihastha*), because "it is the only *ashráma* enjoined in the *shrutis*" (*i.e.*, the Vedas), and the *ashráma* of the celibate or student, which is entered into by means of what is called the thread ceremony (*upanayana*

(1) See a *smriti* of Daksha cited to that effect by Vijnaneshwara in his explanation to smriti No. 83 of Yajnyavalkya, Section on Ritual in the Mitakshara, page 25, Bapu Shastri Moghe's edition, 3rd edition,

(2) Page 275 of the same edition.

samskara) and which, according to all schools, is absolutely compulsory, is not an independent order but is only introductory to the *ashrâma* (order) of the *grihastha* (householder). This text of Gautama is express authority for the proposition that marriage is the only obligatory order of life in the case of a male, and that, if he does not become a *grihastha*, he forfeits his caste and *status*

That opinion is not shared by either Yajnyavalkya or Manu, who head the school which is styled by Vijnaneshwara *the school of aggregation* (*samuchchaya paksha*), because it regards all the four orders as an aggregate, each leading to the other in succession, according to the growing stages of a man's life According to this school (as explained in the *Mitakshara*), no Hindu of a twice-born caste can enter into the last order (that of *yati* or ascetic) unless he has been a *grihastha* (householder or married man); that one may either remain unmarried, leading the life of a confirmed celibate (*naisthika brahmachâri*), or enter into the married life. Either course of life, if properly led, leads to salvation. But then, no man is entitled to enter into the order of a confirmed celibate or perpetual student (*naisthika brahmachâri*) unless he has the special qualifications prescribed for it. He must be what Medhatithi calls a *yama niyama*, or what Yajnyavalkya calls a *vijitendriya*, the meaning of both expressions, signifying the same sense, being that he must have the fullest power of self-control and possess the ability to discharge faithfully and literally *all* the duties and obligations attached to that order. If he has them not, he *must* enter into the married life. For this latter life a literal and strict observance of the duties prescribed for a householder are not necessary. All that is required of him, as explained by Vijnaneshwara in the section on rituals in the Mitakshara (page 33, Bapu Shastri Moghe's edition), is that he should discharge the duties of his order "to the best of his power." Vijnaneshwara substantially adopts this opinion of Yajnyavalkya and Manu.

According to that opinion, marriage is obligatory on those who are not competent and do not feel they are competent to lead the austere life of a *confirmed* celibate or an ascetic; if they do not marry, they become *patita* (outcastes) and forfeit their caste and *status*.

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It follows from this exposition in the *Mitakshara* that, if an unmarried coparcener in a joint Hindu family thinks that he is not qualified either to continue a celibate to the end of his life or to become an ascetic, the rite of *marriage* in his case becomes a necessity; it is forced on him by the *shástrás*, inasmuch as he cannot remain without belonging to one of the four orders of life, and all orders are proscribed to him except the order of the householder. Marriage, therefore, in his case becomes an unavoidable purpose.

It is on this account that it is laid down in a *smriti* as an injunction binding on each Hindu that "by procreating sons and performing their *samaskaras*" (*i.e.*, their initiatory or sacramental ceremonies), "he should set them up in life." This *smriti* is quoted by Vijnaneshwara in the chapter on "Resumption of Gifts" in the Mitakshara. The word *samskaras* there cannot be restricted to any particular ceremony excluding marriage, because, apart from the fact that the word is used in its ordinary sense in the *smriti* so as to comprehend all the ceremonies applicable to a male including that of marriage, the concluding words as to the duty "to set up a son in life" would have no proper significance if they did not refer to the life of a householder. In the case of a *confirmed* celibate or student (*naisthika brahmachárin*) or of an ascetic (*yati*) there can be no such thing as setting them up in life, their duty being to live on alms and lead a life of poverty.

It is by the light of these texts and discussions in the Mitakshara that the particular text in that work, on which the learned Judges of the Madras High Court have based their decision, should be interpreted. The text on which they rely is:—

"Even one person, who is capable, may conclude a gift hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable." (Stokes's *Hindu Law Books*, page 376.)

The words "or the like" are interpreted by the learned Judges as not including "the marriage of a son." But if that

marriage becomes obligatory for the reasons I have set forth above, it becomes as much a family purpose as the obsequies of the father; and both are equally "unavoidable" by the family.

I think, therefore, that Mr. Colebrooke's view regarding the word *samskaras* as it is used in the texts relating to the ceremonies, which initiated brothers are declared bound to perform in respect of uninitiated brothers out of their paternal estate, is correct, and that the decision of the Madras High Court in which that view has been held to be erroneous and devoid of authority, is not warranted by but is opposed both to the express texts (*smritis*) and the law as it has been expounded by such commentators as Vijnaneshwara in the Mitakshara, by Medhatithi, and others.

As to the remark of Dr. Jolly that, according to *some* commentators, the word *samskaras* terminates with the thread ceremony and does not include marriage, so far as my research has gone, I have not been able to find any commentator who has put that restricted meaning on the word as it has been used in the texts relevant to the case of a joint family. In any case, it is sufficient to say from the works of the commentators to whom this Court constantly refers in construing either the Mitakshara or the Vyavahara Mayukha, that there is none among them who has interpreted those texts in the sense of excluding *marriage* from the meaning of the word *samskaras*.

In the judgment of the Madras High Court, reliance is placed, however, upon the explanation in the Smriti Chandrika of a certain text of Narada. (Section 41, page 56, and sections 42 and 43, page 57 of the Smriti Chandrika, translated by T. Krishna Swamy Iyer, 2nd Edition.) But it will be seen from a reference to the said text and to the explanation, that both of them relate, not to the subject of the marriage of a coparcener in a joint Hindu family consisting of a father and his sons or of brothers, and owning ancestral property, but to the case of brothers, who, having no such property, do not constitute a joint family at all. The case of a joint family is expressly dealt with in the preceding three sections, 38 to 40. In section 38 the author of the Smriti Chandrika quotes the same text of Brihaspati

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that is cited by Nilakantha in the Vyavahara Mayukha; in section 39 he adds his explanation to the text; in section 40 he quotes the text of Narada on the same point. These texts in express terms relate to brothers who are joint in estate. There is a reference in the first to "the collected wealth of the father," and to "the patrimony" in the second. And the author of the Smriti Chandrika nowhere says as to these texts that they exclude *marriage* from the term *samskara* used in them. Then in section 41, he quotes another text of Narada, which deals with the case of brothers, who have no "patrimony" and are, therefore, not joint. And the explanations added by the author in sections 42 and 43, on which the Madras High Court have strongly relied in combating Mr. Colebrooke's interpretation of the word "*Samskaras*," are expressly limited to "this text," *i.e.*, to Narada's text given in section 41. That text has, in the first place, no application whatever to a father, and the question of his obligation to bring about his son's marriage. It deals only with brothers. And secondly, even as to them, it deals only with the case of brothers, who have no joint estate, and, therefore, are not bound by any mutual obligations incidental to a coparcenary family.

There is a marked distinction between a family of brothers who are joint in estate and those who are not so joint. In the former, if one of the coparceners wishes to marry, and the family pay him for the expenses of the marriage, they cannot hold him liable to repay those expenses. Nor can they hold his share in the joint estate liable therefor. The reason is that as between Hindu coparceners there can be no mutual accountability and of no coparcener can it be predicated that he has a definite share in it to hold that share liable for the expenses so long as the family is united in estate. [Seen West and Bühler's Digest, 3rd Edition, pp. 765 and 822; and the decisions there cited.] Even at a partition after the marriage, such a coparcener cannot be held liable for what has been spent for him. Whatever is or has to be spent for each coparcener out of the estate must come out of the joint stock and must be debited to the account of the whole family. And if such expenditure has to be incurred by borrowing, it is the family that borrows. Just as each coparcener has to be educated and maintained by the

family out of the family funds, he has to be married also out of them, if he thinks he ought to marry. These considerations do not apply where the brothers are not joint in estate; and it is because they do not apply that an exception is made by a special text—that of Narada—where the father of the brothers has died without performing the thread ceremony of any of them. The supreme necessity for such an exception must be plain to those who are familiar with the exigencies of the Hindu religion and social code. The thread ceremony, according to a text of Yajnyavalkya, must be performed in any event before a boy of one of the twice-born castes reaches a certain age, according as he is a Brahmin, Kshatriya, or Vaishya; if it is not performed before that age, he becomes a *patita* forfeiting all caste and *status*. (The Mitakshara, Acharakanda, Yajnyavalkya's Smritis Nos. 37 and 38: pages 9 and 10 of Bapu Shastri Moghe's Edition, 3rd Edition). The invariable practice is to perform the ceremony when the boy is 7 or 8 years of age It is to save the boy from forfeiture of caste and *status* at a time when, being a minor, he is helpless, that the duty is laid in absolute terms on his brothers of performing his thread ceremony and paying for it out of their own property, if he has no property of his own and he is not joint in estate with them. To that limited extent—of giving the boy the first start in life—the duty goes, because of the boy's complete dependence on others. But after that, the boy has no right to look to his brothers and he must shift for himself as to marriage and other stages of life, because these are generally meant for adult persons and there is no community of property and religious duties between him and his brothers such as exists in a coparcenary family.

After this I need perhaps hardly add that, to those who are familiar with the usages of joint Hindu families, the proposition that the marriage of a coparcener in such a family does not constitute a family purpose so as to make all the coparceners liable for the expenses of the marriage, must appear startling. The very idea of a joint Hindu family is that it must be kept up and continued so long as the family is joint and all the coparceners wish to continue joint in estate; in the marriage of

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each coparcener for that purpose every other coparcener is interested; and, so far as I am aware, it is upon that principle that the mutual relations of coparceners in Hindu families have been regulated up to this day.

So far I have dealt with the question in relation to the three twice-born castes only. As to *Shudras*, all authorities agree that the only *Ashrama* open is that of the householder; hence marriage is the only obligatory ceremony. [See Medhatithi's and Sarvajna Narayan's expositions on Manu at page 753 of the edition of the *Manava Dharma Shastra* published by Rao Saheb Mandlik. See also the Mitakshara, Chapters on *Brahmachari* and *Yati*. West and Bühler, 3rd Edition, page 1064, foot-note (*b*).]

It remains now to notice the last argument urged before us by the learned pleader for the respondents. The facts of the present case show that Gulab's marriage took place when he was a minor; and the learned pleader argues that, according to Manu, such a marriage was not obligatory on the family. The text of Manu relied upon is that "a man aged 30 years may marry a girl of 12, *if he find one* dear to his heart; or a man of 24 years, a damsel of 8; but if he finish his studentship earlier, and the duties of *his next order* would otherwise be impeded, let him marry immediately." (J. N. Bhattacharya's Commentaries on Hindu Law, page 81, 2nd Edition.) This text of Manu is explained by Medhatithi and other commentators as prescribing no limit of age for the marriage of a male but only as recommending that the bride should be younger than the bridegroom. (Rao Saheb Mandlik's edition of *the Manava Dharma Shastra*, page 1163.) The rules of the *Shastras* seem indeed to have been framed by the *Rishis* with the object of discouraging, if not prohibiting, the marriage of a male before he is at least 25 years of age. Nilakantha in his *Samskara Mayukha* states that 25 years should be allotted to each of the four orders of life. But usage has broken in upon the rule. Though the marriage of a minor boy may appear opposed to the intention, if not injunctions, of the *Shastras* and of the Commentators, and however objectionable it may seem to our modern ideas, usage having sanctioned such marriages, we must give effect to them and administer the law as it is, not as it should be.

For these reasons we must hold that defendant No. 2 is entitled to avoid the mortgage in dispute on payment to the plaintiff of Rs. 585 with interest at 6 per cent. per annum from the date of the said defendant's written statement. That must be taken to be the date on which he elected to avoid the transaction. Accordingly we substitute the following decree for that of the lower appeal Court:—

1. Declare that on payment, within six months from this date by defendant No. 2 to the plaintiff, of the sum of Rs. 585 and interest thereon at 6 per cent. per annum from the date of the said defendant's written statement to the date of payment, the mortgage in suit shall be null and void and of no effect and shall be delivered up by the plaintiff to the said defendant to be cancelled.

2. Declare that, in default of payment as above mentioned, the plaintiff shall be entitled to apply to the Court in this suit for and to have the usual mortgage decree on the said mortgage.

The suit as against defendant 1 is dismissed. She had no right to mortgage the property whether on her own behalf or as guardian and the mortgage in dispute is void as to her.

The decree of the lower appellate Court as to the costs in the lower Courts is confirmed. The plaintiff must have his costs of both the second appeals from the defendants.

KNIGHT, J.:—I concur.

Decree varied.

R. R.