APPENDIX-B

LEADING CASES.

(1) Hunooman Persaud V. Babooee Munraj Koonwaree (1856) 6.M.I.A.393.

Facts : One Raja Sheobuksh Singh died leaving behind a minor son, Lala Inderdown Singh and a widow, Ranee Digamber Kunwaree. The Ranee took over the management of the estate and executed a mortgage deed in favour of the defendant, Hunooman Persaud with regard to certain properties. The son, Inderdown (Plaintiff) sued both the Ranee and the mortgagee for setting aside the mortgage deed. The Sudder Ameen decided in favour of the mortgagee, but the Sudder Court, on appeal, set aside the order of the lower Court. Hunooman Persaud, then, appealed to the Privy Council.

Points for decision : The extent of the power of a mother, as manager of the estate of her minor son, to alienate the estate.

Points decided : (a) The power of the manager for an infant heir to charge an estate not his own, is a limited and qualified power and it can only be exercised rightly (i) in case of need, or (ii) for the benefit of the estate. The determinants of the *necessity* and *benefit* of the estate are (1) the actual pressure on the estate, (2) the danger to be averted, and (3) the benefit to be conferred upon it.

(b) The right of a *bona fide* incumbrancer is not affected simply because he takes a charge on lands from a *de facto* manager and not from a *de jure* manager.

(c) The lender is bound to inquire into the necessities for the loan and satisfy himself that the manager is acting for the benefit of the estate, but he is not to see to the application of the money.

(d) Deeds of the people of India ought to be liberally construed, the real meaning and not the form of expression, should be looked into.

2. Brijnarain V. Mangala Prasad (1924) 51.I.A.129.

Facts : Sitaram and his two minor sons were members of a Hindu joint family governed by the Mitakshara law. He mortgaged the joint ancestral property in 1905 and 1907, the purpose being unknown. In 1908 he again executed a mortgage to pay off the earlier mortgages. A decree was passed in 1912 on a suit on this mortgage. In 1915, the minor sons sued Sitaram and the mortgagees for a declaration that the mortgage and the decree were void against them. The High Court at Allahabad upheld the decision of the Sub-Judge of Ghazipur, namely, that the sons not having beeng properly represented in the suit were not bound by the decree. On the authority of the decision of the Privy Council in Sahu Ram V. Bhup Singh, 44.I.A.126, it was held that a mortgage of joint family property could not constitute an antecedent debt so as to validate a lattter mortgage. The matter, then, went to the Privy Council on appeal.

Points for decision : 1. Manager's power of alienation of joint family property.

2. Son's liability to pay off father's debt.

3. Antecedent debt.

Points decided : The Privy Council summed up the law relating to a father's debt in a joint Mitakshara family of himself and his sons. It was explained that is Sahu Ram's case the doctrine of antecedent debt had been spoken of as having "arisen from the necessity of protecting the rights of third persons." In Brijnarain's case, the doctrine was described as a part of the doctrine of pious obligation. A father's power of alienation is based on (i) his right

as a manager as well as (ii) on the pious duty of his sons. In this context, the Privy Council laid down the following 5 propositions.

(1) The managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity.

(2) If he is the father and other members are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of that debt.

(3) If he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate.

(4) Antecedent debt means antecedent in fact as well as in time, i.e. the debt must be truly independent and not part of, the transaction impeached.

(5) There is no rule that this result is affected by the question whether the father who contracted the debt or burdened the estate, is alive or dead.

3. Pramathanath Mallick V. Pradyumna Kumar Mallick (1925) 52.I.A.245.

Fact : Mutty Lal Mullick of Calcutta established certain family deities and died in 1846, bequeathing by a will his properties and deities to his son, Jadulal for maintaining the worship. The son built a *Thakurbari* and dedicated it to one of the idols by a deed in 1888. Under the deed, the idol was not to be removed from the *Thakurbari,* till *another* suitable *Thakurbari* was provided for the idol. Jadulal died in 1894 and the *palas* of worship were divided among his three sons. Pramatha, one of the sons, built a house with a *Thakurbari* and wanted to remove the idols there during his turn of worship. This was opposed by his brother and nephew. The trial Judge before whom a declaratory suit was filed, decreed the suit on

the ground that Jadulal being a mere shebait and not the founder of the worship had no right to impose a condition as to the location of the idol so as to bind the succeeding shebaits. On appeal, the suit was dismissed. The Court of appeal held that the condition was valid and allowed the appeal. Pramatha thereafter appealed to the Privy Council.

Points for decision :

(i) Whether a Hindu idol is a juristic entity and whether it can be transferred or destroyed like any other property.

(ii) In determining the question as to the location of an idol, is the will of the idol itself, expressed through a guardian to be given effect to?

(iii) Whether a scheme for the worship of a family idol can be framed, without joining as parties to the suit, the female members of the family interested in the worship.

Points decided : All persons of the family, both males and females must be made parties to the suit as they are all interested in the worship.

The suit must be re-heard in the presence of the idol, represented by a disinterested next friend to be appointed by the Court and so remanded.

4. Tagore V. Tagore (1872) 9.Beng.L.R.377 = I.A.Supp. Vol. 47.

Facts : Prosunna Kumar Tagore, a Hindu inhabitant of Calcutta governed by the Dayabhaga school, died in 1866, leaving properties-partly ancestral and partly self acquired-which were all disposed of by his will. He had an only son, Ganendra Mohan who had embraced Christianity in his lifetime and to whom he had given property yielding an annual income of Rs. 7000 at the time of his marriage. Jotindra Mohan and Surendra Mohan were the testator's nephews. Property was bequeathed : —

(1) To Jotindra for life ; to his eldest son for life ; in strict settlement upon the first and other sons of such eldest son successively in tail male ; thereafter, to the other sons of Jotindra for their respective lives.

(2) "After the failure or determination" of the above estate, to Surendra and his heirs in tail male.

(3) "After the failure or determination" of the last mentioned estate, to the heirs of Lalit Mohan, who was dead at the time of making the will, in tail male.

The will expressly adopted primogeniture in the male line through males and excluded women and their descendants. Alienation was prohibited. At the time of the testator's death Jotindra, the head of the first series of estates, had no son, nor had he any during the suit. Surendra, the head of the second series of estate, had a son, Promoth Kumar, who was born in the lifetime of the testator. Lalit Mohan, the head of the third series, was dead at the time of the making of the will ; but left a son Suttendra, born during the restator's lifetime and capable of taking under the will.

The son, Ganendra, sued to set aside the will contending that *(1)* it was wholly void as to the ancestral estate ; *(2)* the father was bound to provide him with adequate maintenance ; *(3)* the whole framework of the will was void since the Hindu Law recognised no distinction between legal and equitable estates ; *(4)* the life estate to Jotindra was void, since a Hindu testator could bequeath nothing less than what was termed *the whole bundle of rights ; (5)* the estates following upon this life estate were void as infringing the law against perpetuities ; and *(6)* as to everything after the life estate, there was an intestacy and the plaintiff was entitled as heir at law.

The lower Court dismissed the suit. On appeal, the suit was partly decreed. Both the parties appealed to the Privy council.

Points decided : The following principles of law were laid down by the Privy Council : —

(i) A private individual cannot alter the law of succession by gift or will, by making property heritable otherwise than the law directs.

(ii) In order to make a gift under a will valid in Hindu law the donee, except in the case of an adopted son or a child in womb, must be a person in existence, capable of taking at the time when the gift takes effect.

(iii) Life estates are valid in Hindu law.

(iv) An estate in tail male, as it exists in England, in not authorised by Hindu law.

(v) The true mode of construing a will is to consider it as expressing in all its parts, whether consistent with law or not, the intention of the testator.

Decision : The plaintiff was held entitled to the whole estate after the death of Jotindra.

5. Indira Rani Ghose V. Akshoy Kumar Ghose (1932) L.R.59.I.A.419.

Facts : Ramnath Ghose, a Hindu governed by the Dayabhaga school of Hindu law died in Calcutta on July 26, 1904, leaving a widow and two infant sons, Siddheswar and Akshoy. By a will, executed on October 30, 1903, he gave certain legacies and thereafter bequeathed his whole estate to the two sons absolutely, subject to the condition, "In the event of any son or son's son dying without leaving behind him male issue surviving, the other of my sons or son's sons living at the time shall be equally entitled to his or their share."

Siddheswar, the eldest son, died in 1930, leaving a widow, the appellant Indira Rani and an infant daughter. Upon his death, the other son, the respondent Akshoy took possession of his share on

the ground that Siddheswar having died sonless, he was entitled to his share under the will. Indira Rani, then, instituted this suit for declaration that the bequest to the other son could not take effect u/s 124 of the Indian Succession act, 1925. The trial Court decreed the suit, but the decree was reversed on appeal. Indira Rani, then, appealed to the Privy Council.

Points for decision : The question for decision was whether the bequest was valid u/s 124 of the Indian Succession Act, 1925. The section applies to ``Substitutional gifts'' and not to ``Successive bequests.'' Three conditions must be satisfied for the bequest to take effect ; (i) the legacy must be contingent ; (ii) no time should be mentioned for the occurrence of that event ; and (iii) the contingency must happen before the date of distribution of property. It is thus clear from the section that where a time is mentioned in the will for the occurrence of the specified uncertain event, it is not necessary that the uncertain event should happen before the date of distribution. In such a case the section does not apply. the gift takes effect if the contingency happens before the time so specified in the will.

In this context, the Privy Council held that the gift over was contingent, but the will specified the period before which the contingency was to happen, namely, the death of the son or the son's son who had taken something under the original gift contained in the will and that consequently section 124 did not apply. The date of distribution under the will was the death of the testator. The death of the son or son's son who takes something under the will must necessarily occur beyond that date. To such a gift section 131 would apply.

Points decided : The following principles of law were settled viz ;

(a) See. 124 of the Indian Succession Act applies only if the happening of the uncertain event before distribution was alone within the contemplation of the testator.

(b) Where the testator provides for the happening of the uncertain event after distribution, viz, his death, section 131 is applicable.

(c) The clause of defeasance was valid and the gift over in favour of the second son had taken place.

It was not a contingent bequest but a bequest of vested interest.

Accordingly it was held that the Court of appeal was right in reversing the decree of the trial Court.

6. Rangasami V. Nachiappa (1919) 29.C.L.J 539 = 46.I.A.72 = I.L.R.42.Mad.523.P.C=23.C.W.N.777.

Facts : Marakammal succeeded to the estate of her deceased husband Arthanari Gounden and her childless son Ramasami and entered into possession of the estate. At that time Ramasami Gounden, the nephew of her husband was the nearest reversionary heir, Marakammal made a gift of some of the properties inherited from her husband and son to the said Ramasami in 1893 who undertook to maintain the widow, give her daughter in marriage and to do other acts, mentioned in the said deed of gift.

The donee Ramasami entered into possession but died prior to 1896 and was succeeded by his two nephews, the sons of his undivided brother, who conveyed in 1896 to the plaintiff, Rangasami, by deed of sale two small properties which had been included in Marakammal's deed and in the same year, they borrowed from the plaintiff a sum of money and in security thereof mortgaged their own share as well as the share derived from Marakammal.

The plaintiff, Rangasami who was entitled to one half of the property last held by Marakammal as one of the reversionary heirs,

brought the suit to set aside the deed of gift by Marakammal. The suit was decreed by the first Court but on appeal a Full-Bench while upholding the decision in other points, dismissed the suit on the ground of estoppel. The plaintiff thereupon appealed to the Privy Council.

The Points for decision : The power of a Hindu widow to surrender or renounce her right in favour of the next reversioner as well as her right of alienation for certain specific purposes.

Points decided :

(i) A Hindu widow can renounce in favour of the nearest reversioner if there be only one or of all the reversioners nearest in degree if they are more than one at the moment. But the surrender must be of her whole interest in the whole estate and must be *bona fide*. In such a case the question of necessity is immeterial.

(ii) A partial surrender even though absolute as to that part is invalid.

(iii) An alienation by widow is legitimate if it is for religious or charitable purposes or for purposes which conduce to the spiritual welfare of the husband, or of necessity. But necessity must be proved. Mere recital of necessity in the deed of alienation is not sufficient except in the case of the equitable modification of the rule, viz, where the alienee has in good faith made proper inquiry and been led to believe that necessity existed.

(iv) If the alienation be total, i.e. of the whole estate, the consent of the nearest reversionary heirs will have the effect of making it equivalent to surrender of the whole estate. In case of a partial alienation, the consent merely raises a presumption of the neceessity.

(v) An alienation by a widow is not void but only voidable.

7. Suraj Bunsi Koer V. Sheo Persad Singh (1880) L.R.6.I.A.88 = I.L.R.5.Cal.148. (P.C).

Facts : Suraj Bunsi Koer, widow of Adit Sahai, brought the suit on behalf of her minor sons, to set aside a sale in execution of a decree obtained by one Balaki Choudhury upon a mortgage executed in his favour by the said Adit Sahai, of certain immoveable property belonging to a joint family governed by the Mitakshara law, in which the minors were co-sharers with their father.

The suit was decreed by the first Court but on appeal a Division Bench reversed the judgement of the first Court and dismissed the suit. The plaintiff thereupon appealed to the Privy Council.

The points for decision : Son's share in ancestral property under Mitakshara law-Coparcener's right of alienation-Liability of sons for father's debts.

Points decided :

(i) Under the laws of Mitakshara, each son upon his birth takes a share equal to that of his father in the ancestral immoveable estate and can compel his father to make a partition of such estate.

(ii) The rights of the coparceners in a joint Hindu family consisting of a father and his sons do not differ from those of the coparceners in a like family consisting of undivided brethren except in so far as the sons are affected by the obligation of the Hindu law to pay their father's debts, not contracted for illegal or immoral purposes, and by the fact that he is naturally the manager of the joint family estate.

(iii) It is a settled law in the Madras Presidency that one coparcener may dispose of ancestral undivided estate to the extent of his own share, even by private conveyance.

(iv) In the Bombay Presidency, unauthorized alienations voluntarily made by one coparcener are good, even for his own share, only when made for value.

(v) In Bengal, the purchaser of undivided property, sold in execution of a decree during the lifetime of the debtor for his separate debt, acquires the debtor's interest in such property, with the power of ascertaining and realizing it by partition.

(vi) Under the Hindu law, subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of sons for the debts of their father. Accordingly, where ancestral property has passed out of the family, either under a conveyance executed by the father in consideration of an ancestral debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover the property,unless they show that the debts were of a kind for which they would not have been liable, and that the purchaser had notice to that effect.

(vii) The purchaser at an execution sale, being a stranger to the suit without such notice, is not bound to make inquiry beyond what appears on the surface of the proceedings.

(viii) Parties to a suit or execution proceedings are presumed to know, i.e., to have actual or constructive notice of the matter on the record.

8. Guru Govind Saha and others V. Anund Lal Ghose and others (1870) 5.Beng.L.R.15, 37.[F.B] = 13. W.R.49.[F.B].

Facts : Dayamoyee, the widow of deceased Gangadhur (a Hindu governed by the Dayabhaga school) transferrred some property in favour of the appellants, Guru Gobind and others. The plaintiffs, Anund Lal and others, fifth in descent from the great-grand-father of the deceased, sued for setting aside the alienation made by Dayamoyee. During the trial a question arose whether Punchanun, the paternal uncle's daughter's son of deceased

Gangadhur, was a preferential heir, inasmuch as he was a *sapinda,* whilst on the other hand, the plaintiffs were only *sakulyas.*

The defendants preferred an appeal against the judgement of the Subordinate Judge of Dacca and the case went before a Full Bench of Calcutta High Court for decision.

Points for decision : (i) Whether the plaintiffs being but descendants by adoption and being fifth in descent could take at all ; and

(ii) Whether Punchanun, admitting that plaintiffs could take at sometime or other, had a better claim as a *sapinda* than the plaintiffs who were *sakulyas.*

Points decided : (i) Doctrine of religious efficacy is the guiding principle of Dayabhaga succession whereas under Mitakshara sometimes consanguinity and at other times religious efficacy has been regarded as the guiding principle.

(ii) The *sapindas* come before the *sakulyas* and the *sakulyas* come before the *samanodakas.*

(iii) Among the *sapindas,* those who offer funeral cakes to the paternal ancestors are preferred to those who offer such cakes to the maternal ancestors. Similarly, those who offer a larger number of cakes of a particular description, are preferred to those who offer a less number of such cakes ; and where the number of such cakes is equal, those that are offered to nearer ancestors are always preferred to those offered to more distant ones. The same principle is applicable to *sakulyas and samanodakas.*

(iv) A father's brother's daughter's son is entitled to be recognised as an heir according to the Dayabhaga school of Hindu law. He is a *sapinda* and is to be preferred to a *sakulya.*

Decision : Punchanun was recognised a nearer heir to the deceased Gangadhur than the plaintiffs, Anund Lal and others.

9. Sri Balusu V. Sri Balusu (1899) 22.Mad.308 = 26. I.A.113.

Facts : The defendant was the only son of his father, governed by the Mitakshara (Madras) school of Hindu law, and was adopted by a widow with the consent of the *sapindas* of her deceased husband. The plaintiff was interested in the estate of the deceased owner and challenged the adoption. the trial Court declared the adoption valid and the above decision was upheld by the Madras High Court. The aggrieved plaintiff, then, preferred an appeal to the Privy Council.

Points for decision : (i) Whether a Hindu widow can adopt without an express authority from her husband.

(ii) Whether an only son can be given or taken in adoption under Hindu law.

Points decided : (i) Under Madras sub-school of Mitakshara, where the consent of the husband's kinsmen has been obtained, the widow's power to adopt is coextensive with that of the husband. She may, therefore, adopt even an only son (which though irreligious, is not illegal), just as much as her husband could have done.

(ii) Under Hindu law, an only son may be given or taken in adoption. Texts of *Vasistha, Saunaka* and other commentators prohibiting adoption of an only son are merely recommendatory.

(iii) The mere fact that a transaction is condemned in books like the *smriti* does not necessarily prove it to be void. It raises the question, what kind of condemnation is meant.

(iv) So far the doctrine of *factum valet* is concerned, "If the factum, the external act, is void in law, there is no room for the application of the maxim. Many things which ought not to be done in point of morals or religion are valid in point of law. But it is nonsensical to apply the whole maxim to the same class of actions and to say that what ought not to be done in morals stands good in morals, or what ought not to be done in law stands good in law."

Decision : The adoption of an only son is valid under Hindu law and the widow under Madras school can validly adopt even an only son, with the consent of the *sapindas* of her deceased husband in the absence of any express or implied prohibition from him.

10. Bhoobun Moyee v. Ram Kishore (1865) 10.M.I.A.279.

Facts : Gour Kishore died leaving a widow, Chandrabullee and a son, Bhawani Kishore. Bhawani married but died soon after, leaving his widow Bhoobun Moyee. After the death of Bhawani his mother, Chandrabullee adopted Ram Kishore on the strength of an authority given to her by her late husband, Gour Kishore. Bhoobun Moyee challenged the adoption. The High Court of Calcutta decided the case in favour of Ram Kishore, Bhoobun Moyee, then, preferred an appeal to the Privy Council.

Points for decision : Whether a Hindu widow, expressly authorised by her husband to adopt in the event of her son's death, is competent :

(a) to adopt if her son dies leaving a widow ; and

(b) to divest the estate, already vested in another heir, by adoption.

Points decided : (i) If the son dies leaving a wife, the widow's power to adopt comes to an end *at his death,* and she cannot thereafter exercise it, though she might have been expressly authorised by her husband to adopt in the event of her son's death.

(ii) An adoption made by the mother-in-law when the estate has already vested in the daugher-in-law is invalid.

Decision : Adoption of Ram Kishore was declared invalid. (The same principles was followed by the Privy Council in *Amrendra Mansingh V. Sanatan Singh.* (1933) 12.Pat.642 = 60.I.A.242).

11. Manikyamala V. Nandakumar (1906) 33.Cal.1306.

Facts : A Hindu, governed by the Dayabhaga school, died leaving his widow, Manikyamala as the sole heir. Manikyamala who was authorised by her late husband to adopt three sons in sucession, adopted Akshoy. Akshoy died leaving his widow, Bidhumukhi. Bidhumukhi also died soon after. Manikyamala then adopted another boy named Mahendra. Nandakumar, a reversionary heir to the original deceased owner challenged the second adoption. The case went on appeal, to the Calcutta High Court.

Point for decision : Whether the conditional authority to adopt a son in the event of death of a previously adopted son, terminates upon the death of the first adopted son, leaving a widow as his heir.

Point decided : Held, following the principles laid down in Bhoobun Moyee V. Ramkishore (1865) 10.M.I.A.279, that the authority given to the widow to adopt came to an end, upon the death of the first adopted son, leaving a widow as his heir.

Decision : The adoption of Mahendra was declared invalid.

[This is in conflict with a recent decision of Nagpur High Court in *Bapuji V. Gangaram* (1941) Nag. 178 = 195.I.C. 282. In that case a Hindu died leaving his widow and son. The son died leaving his widow who then remarried. The mother then adopted. It was held that the adoption was valid.

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