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THE EFFECT OF ADOPTION ON PRE-EXISTING RIGHTS.

(Continued from p. 105.)

Evidence of Mr. Rangacharya taken on Commission.

I translate Manu, Ch. IX, verse 141, as follows:—"But that given (or adopted) son who is possessed of all (good) qualities shall certainly obtain, even though he has come from another *gotra*, the property of him (to whom he is given)." I translate Manu, Ch. IX, Sloka 142 as follows:—"The given (or adopted) son shall in no case obtain the *gotra* and the property of begetter (or natural father); the *pinda* goes along with the *gotra* and the property and the *Swadha* of him who gives (a son in adoption) goes away."

Q.—Is *Dadathaha* in the ablative or genitive case?

A.—I consider it to be in the genitive case. I say it is in the genitive case on account of its connection with the term *Swadha*, a term which serves as a formula to be repeated on occasions when oblations are offered to the *pitris*. Here, however, the term is used to signify the merit or the (*Apoorva*) which accrues to the *Pitru* on the offering of an oblation by his son or sons. Thus *Dadathaha Swadha* would mean the beneficial result which could accrue to the father (who gives), after his death, by the son given away offering oblations to him.

I believe that *sloka* 141 and *sloka* 142 are closely related to one another.

Q.—What is the connection between the two slokas?

A.—In order to make out the connection between these two *slokas*, I believe it is necessary to make out what the commentators on *Smrithi* called the *Avakasa* of a *sloka*, which means the scope for the operation of the rule given in the *sloka*. In connection with *sloka* 141, I agree with Medhatithi in considering that the scope arises on the birth of an *Aurasa* son to the father who had already taken a son in adoption. The

question in such cases is whether the adopted son is entitled to any property of his adoptive father. That this is the scope is borne out, I believe, by the indeclinable particle *Thu* in verse 141, which means *but*. This sloka is intended to give an exception to a general rule according to which when the *aurasa* son is in existence the adopted son cannot obtain any property of his adoptive father. This exception relates to the case of the *aurasa* son born after the adoption of the adopted son. It is said that in this particular case the adopted son is entitled to a share in the property of his adoptive father side by side with the *aurasa* or natural born son. Now naturally it would occur to one why such exception should be made in this particular case. And the next *sloka* satisfies that *Akanksha* or answers that question. In *sloka* 142, it is said that in no case shall an adopted son obtain the *gotra* or the property of his natural father. The reason why the term *Kvachit* is used in *sloka* 142, is to declare emphatically that even in cases like the one contemplated in the previous sloka, the adopted son cannot obtain the gotra or the property of his natural father. If the adopted son could under any circumstances obtain the *gotra* and the property of his natural father, it ought to have been possible for him to revert to the natural father's *gotra* when the need for him in the adoptive family ceased by the birth of an *aurasa* son. *Sloka* 142 declares against such a possibility and bases the declaration on the religious conviction that the *swadha* of the father who gives a son in adoption goes away altogether. That is how I understand the relation between the two *slokas*.

Q.—You referred in your answer to a general rule in accordance with which an adopted son would not be entitled to obtain any property of the adoptive father when there was an *aurasa* son in existence. Are you referring to sloka 163, Ch. IX of Manu?

A.—Ch. IX sl. 163 is one of the *slokas* which lay down that rule.

Q.—Please refer to Medhatithi's commentary on *sloka* 141 of Ch. IX and see if Manu IX, 163, is the verse quoted by Medhatithi as laying down the general rule?

A.—I find that that verse is quoted by Medhatithi in the commentary here. In *sloka* 142 the word *Janayitru* means begetter or natural father.

Q.—Do the words *Janayituhu* and *Dadathaha* in sloka 142 refer to the same person or different persons?

A.—They may refer to the same or different persons; it will be well to take down the reason why I say so. The latter half of the *sloka* makes a general statement of which the former half seems to be a particular application.

Q.—Does the word *Dadathaha* in the last foot of *sloka* 142 refer to and mean any person who gives anything or a father who gives a son?

(*Objected to*).

A.—It only refers to a father who gives his son away but not to any particular father. That is what I meant when I said that the latter half of the *sloka* gives a general rule of which the former half is a particular application.

Q.—Does the word *Janayitru* in the first foot of *sloka* 142, refer to any particular natural father or to the natural father of any son given in adoption? In your answer to the last question you stated that the word *Dadathaha* does not refer to any particular father but to a father who gives a son in adoption. With reference to this answer I wish to know what construction you place upon the word *Janayituhu*.

A.—I do not exactly understand the drift of the question, but I suppose it is intended to make my meaning clear. If you take into consideration the answers given by me to the previous questions, it will come out, as I believe, that *sloka* 142 is intended to show why an adopted son is entitled to inherit property in the family into which he was adopted side by side with an after-born *aurasa* son. The *Janayitru* here refers to the natural father of such an adopted son; while the *Dadathaha* in the latter half of the *sloka* refers to any father who gives away a son in adoption.

Q.—Does the 1st part of *sloka* 142 of Ch. IX contemplate a gift in adoption by the natural father or by somebody else?

(*Question objected to*).

A.—Strictly the term *Janayitru* means only the natural father; more than that I do not know.

Q.—In translating the first sentence of Medhatithi's Commentary on *Sloka* 142, Mr. Golap Chandar Sirkar amends the words *Tooktam* in Mandalik's edition into *Yuktam*. Is the emendation necessary and, if not, what is your translation of the first sentence?

A.—I do not consider the emendation necessary. I understand the first sentence in the commentary to give the summary and the conclusion of the previous *sloka* according to which the adopted son becomes entitled to share in his adoptive father's property even under the peculiar circumstances mentioned by me above. And my translatihn of that first sentence is: "However, from this it has been stated that the adopted son has the title to a share."

Q.—Please translate the passage in Medhatithi's commentary on sloka 142 beginning with *Anyetu* and ending with *Vaktavyam*.

A.—"Others say that *Na Haret* is *Na Harayet* having the *Nich* suppressed within itself, and they say that in consequence as in the case of the *Dwyamushayana* both have to be beneficially served. The latter (half) of the *sloka* here begins (the statement of) the beneficial service. They have it understood thus. When the son shall not obtain the *gotra* and the property there is something to be commented upon and this has not been (so) stated; when another meaning exists, surely it is not necessary to mention a "*Pramana*".

In translating the above passage the misprint *Harayét* is corrected into *Hārayét*. I have noticed the word *Apnuyat* in Kulluka's commentary on sloka 142, in reference to the word *Haret* and have taken it into consideration in my translation of the sloka; *Apnuyat* means "Shall or may obtain." I have noticed the words *Na Prapnoti* in Raghavananda's commentary on the same sloka in dealing with the words *Na Haret*. The words *Na prapnoti* means "does not obtain."

Q.—Please translate the passage of the Dattaka Mimamsa corresponding to placitum 8, S. VI of the Dattaka Mimamsa in Stokes, H. L. Books beginning with *Etena* and ending with *Chandrikakarah*.

A.—"From this it follows that by the very act of bestowing sonship, the adopted son gets "own-ness" in the property

of him who receives (him as son) as well as the capacity to be of his *gotra*. In regard, however, to the property of the giver (the natural father), it is said that, through the cessation of sonship the given (or adopted) son, from the very gift itself ceases to have his "ownness" (in that property) as also the *gotra* of the giver. So says the Chandrikakara".

Q.—Is the portion you have just translated in effect a commentary upon verse 142, Ch. IX, Manu, quoted in placitum 8, Sec. VI of Dattaka Mimamsa (S.H.L. Books).

A.—Yes, I think so.

Q.—Does the word *Swatvam* which you have translated as "ownness" standing by itself refer to complete ownership or incomplete ownership. (Witness wishes to know the meaning of the expressions, "Complete ownership" and "incomplete ownership".

Q.—This text declares that *Swatva* ceases in certain cases. Will the right of a son to inherit the self-acquired property of the father upon the latter's death, be comprehended within the term *Swatvam*?

(*Mr. V. Krishnaswami Iyer objects to the question*).

A.—Although I am not sure I have quite comprehended the question, I believe it is to know why I have translated *Swatva* as "ownness" rather than as "ownership" or "proprietary right". "Ownness" though somewhat peculiar in English comes nearer to the Sanskrit *Swatva* and does not exactly mean the same thing as ownership. There may be own-ness in relation to a property of which I am not yet owner. If such cases are implied by incomplete ownership, I believe *Swatva* includes both complete and incomplete ownership. In the latter part of the question there is a point of law involved on which I do not want to risk an opinion.

Q.—Would the present right of a son to a share in joint family property with his father be included in the term *Swatvam*?

A.—Yes, I think so.

Q.—Does the passage you have translated from Dattaka Mimamsa, refer to a case in which the natural father is alive or to other cases?

A.—That passage being chiefly based on Manu IX, 142, I believe it contemplates a case in which the natural father is the giver of the son. The passage in the Dattaka Chandrika beginning with *Datri Dhane* and ending with *Bhavateetyuchyate* and corresponding to the last portion of placitum 25 of Sec. III of the Dattaka Chandrika (S. H. L. Books) is the same as a portion of the passage, I have translated from the Dattaka Mimamsa. The language of the original Smriti Chandrika beginning with *Datridhane* and ending with *Bhavatiti* is almost exactly the same as the language of the passage from the Dattaka Chandrika and the Dattaka Mimamsa referred to above.

Q.—Please translate Sl. 201, Ch. IX, Manu.

A.—I accept the translation given by Buhler in the Sacred Books of the East, Vol. (25) as correct.

Q.—Please translate the quotation from Narada in the Mitakshara commentary on Yagnyavalkya *Adhyaya* II, Sl. 140.

A.—I translate it thus: "The hater of the father, outcaste, the eunuch, and he who has committed an *Upapathaka* sin, these shall not obtain a share even though they are *aurasas*. How (then) shall the *Kshetraja* (obtain) ?"

Q.—Please translate Mitakshara, Ch. II. Sec. X, pl. 6.

A.—"In the case of these the incapacity to obtain the share is appropriate only when the (disabling) defect has come to be before division. It does not however hold true in the case of one who is already divided ?

Q.—Is there any difference in meaning between *Labheran* used in the text of Narada referred to above and the word *Haret* used in Manu, Ch. IX, Sl. 142, beyond the difference of plural and singular ?

A.—The meaning implied by the 2 words is the same.

Q.—Do you lay any stress on the word "implied" in your previous answer ?

A.—I have used "implied" in the sense of "denoted".

The words *Labheran* and *Haret* are both *Vidhiling* form and are used in the imperative mood.

Q.—Please translate the quotation from Vriddha Manu in the Mitakshara commentary on Yagnyavalkya, Ch. II, S. 136

(beginning with *Aputra* and ending with *Labhetcheti* corresponding to S. H. L. Books. Mitakshara, Ch. II, Sec. I. Pl. 6.

A.—"A sonless widow who is keeping her husband's bed unsullied and is preserving in the vow (of asceticism), shall present his funeral oblation and obtain the whole share (of his property)." The word translated as "shall obtain" is *Labhet*. I do not see any difference in meaning between *Labhet* as used here and the word *Haret* in Sloka 142, Ch. 9, Manu.

Q.—Mr. Golab Chandra Sircar states in his evidence thus; "That adoption operates as civil death of the boy as regards the family of his birth by putting an end to all secular and spiritual connection of the boy with all natural relations."

A.—I have not made a special and complete study of the Hindu Dharmasastras. But even my limited knowledge here makes me feel that Mr. G. C. Sirkar has gone too far in his opinion in regard to the effect of adoption.

The effect of adoption is different from that of *Sanyasa*. In this latter case the effect amounts to civil death. In the former case there is only a modification of secular and spiritual rights and relations. The rules regarding *Asaucha* and restraint upon marriageable relations and the burden of performing funeral obsequies, as these affect an adopted son, go, as I believe, to prove my position.

Q.—In what way do these affect an adopted son?

A.—I have not now in my mind the details bearing upon the question as they are found in our Smritis. Generally speaking, I remember that an adopted son has to observe restrictions in regard to the choice of a bride for marriage both in relation to the family of his birth and that of his adoption. In regard to *Asaucha*, he is similarly related to both the families. He has to observe *Asaucha* on certain deaths occurring in his natural family in the same way in which certain members of his natural family have to observe on his death, although the adoption in his case is to a *gotra* different from that of his natural father. As to obsequies, the burden of performing the funeral obsequies is entirely taken away from the *Sanyasi* while in the case of the adopted son such complete freedom is not noticeable in reference to the natural family.

Q.—Mr. Sirkar says that the word *Janayituh* in Manu, Ch. IX, S. 142, which means the 'natural father' includes all relations to whose property the boy might have acquired proprietary right. Is this correct?

A.—It perhaps does so inferentially, but as I have already pointed out the word *Janayitri* strictly means begetter or natural father.

Note.—Mr. Krishnaswami Iyer admits that Sl. 142, Ch. IX, Manu, as quoted in p. 43, l. 8, of Mandlik's Vyavaharamayukha and in the Mitakshara commentary on Yagnyavalkya by G. C. Sirkar, (Part II, Ch. II, S. 18, para. III) contains the word *Bhajet* instead of *Haret*.

Q.—Does the prohibition contained in the first half of Sloka 142, Ch. IX Manu, relate according to rules of interpretation to something which is to happen after the adoption or which has happened before the adoption?

(*Objected to.*)

A.—As I said before, the word *Haret* is in the imperative mood and *Na Haret* therefore gives a negative command. And I believe it holds true in every language that what is commanded by the verb of command becomes applicable to the subject thereof, *viz.*, the given son, only after the act of gift or adoption. That is in accordance with what I understand to be the correct rules of verbal interpretation, *Sabda Bodha*. (Mr. Sivaswami Iyer says that the question has not been fully answered, but the witness says he thinks he has answered the question).

Q.—According to rules of interpretation, is the *Haranam* which is prohibited in S. 142, Ch. IX (M), the *Haranam* which has taken place before the adoption or that which is to take place after the adoption?

(*Objected to.*)

A.—My answer to the previous question brings out, I believe, that it refers to the *Haranam* which is to take place after the adoption.

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Cross-Examination by Mr. V. Krishnaswami Iyer.)

Q.—To your knowledge is there any sloka of Manu other than sloka 143 of Chapter IX, or any other Smrithi writer, relating to the rights of the adopted son in the natural family?

A.—Just now I am not aware of any. I do not think I have come across any Sloka of the kind since I began to think about these passages recently.

Q.—If the adopted son has no right to the property of his mother in the natural family at the time of the adoption, how would you understand the term *Janayituh* ?

A.—I understand this question to be similar to another which was put to me by Mr. Sivaswami Iyer yesterday. And my answer is the same as I gave to him, that the term *Janayitru* in the passage strictly, *i. e.*, apart from all implications, means the natural father. What it may mean by implication I feel I am no authority on. If the adopted son had no right to the property of his mother in the natural family, and if such a rule were based upon verse 142, Ch. IX, Manu, then that rule would by implication interpret *Janayitru* to include the mother also.

Q.—If the adopted son be not entitled to the property of any other member in the natural family and if that rule is based upon this text of Manu, would not *Janayitru* stand for the natural family ?

A.—I believe it ought to. And I am not aware of any other text dealing with this question.

Q.—If there be a grandson and a grandfather in an undivided family and the grandson is given away in adoption by his mother, and such adopted boy does not take any interest in the property of the natural family, would you understand *Janayitru* to include the grandfather ?

A.—The previous condition that this decision is based upon this text being granted, I believe the word *Janayitru* must in this case be made to include the grandfather also.

Q.—You would give a similar answer if it were uncle and nephew.

A.—If a similar question were put in relation to an uncle and nephew, I would give a similar answer.

Q.—Is there a rule of the Poorva Mimamsa that the *Linga* or gender of the *Uddesya* (that in relation to whom or which something is commanded) is not material and a word in the masculine gender would in consequence include the feminine gender ?

A.—I believe it is so in all cases where the *Uddesya* itself is generally applicable both to man and woman.

Q.—Is that rule that the masculine includes the feminine found in the sixth Adhyaya, first para, third Adhikarana of Jaimini's Nayamalavistara ?

A.—Yes.

Q.—Is that rule relied on in Chapter 2nd, S. 10, Placitum 8 of Mitakshara (Stokes' Hindu Law Books) corresponding to the Mitakshara commentary on Yagnyavalkya, Sloka 140, Chapter II ?

A.—Yes.

Q.—Having regard to the rule of interpretation referred to, *Janayitru* in Sloka 142, Chap. 9, Manu, would include a woman ?

A.—According to that rule such interpretation would be appropriate.

Q.—When does a person acquire his *gotra* ?

A.—There seems to be much difference of opinion on the question. Some hold that a man is born with his *gotra*. It is declared in some Dharmasastra works that a girl for the first time obtains her *gotra* only after marriage and that till marriage she is as it were of no *gotra*. In regard to boys the *Upanayana* is held to confirm the title to the *gotra*.

This, I understand, to be the reason why the adoption of an *Anupanita* is considered good by the Smritis. But, as I said before, our Smrithi law givers do not seem to be unanimous and emphatic in regard to the above rule about boys.

Q.—If a boy dies before Upanayana, are his funeral obsequies performed in the *gotra* of the family of his birth ?

A.—I have no knowledge of the details as to how these things are performed, but I believe that they are performed in a manner in which *his birth in a particular gotra* is distinctly recognised.

Q.—In marriage, is a girl given as belonging to a particular gotra ?

A.—When a girl is given in marriage she is so given, it being recognised that she is born in a particular gotra.

Q.—In marriage does not the girl pass from one gotra to another ?

A.—It is often said that in marriage there is *Gotrantara-pravesa* in the case of a girl. But about that, as I said before, there seems to be difference of opinion. I cannot name any author or give any reference with reference to my answer here.

I have not myself fully investigated the question. I mean that certain Nibandanakaras and that certain Pandits speak of a *Gotrantarapravesa.*

Q.—So far as Manu is concerned, is it not his view that *gotra* is acquired by birth?

A.—I am not sure.

Q.—Do not the words *Sampraptopyanya gotratah* in Sloka 141, Chapter IX, Manu, indicate that according to his opinion *gotra* is acquired before *Upanayana* having regard to the fact that adoption must take place before Upanayana?

A.—They need not necessarily indicate it.

Q.—How do you say that?

A.—The words mean "even though he has come from another *gotra*". According to Manu every *Dwija* boy is necessarily born in a gotra. And since there may be adoption from a family of the same *gotra* or from another of a different gotra to a third family, the adopted boy coming from another *gotra* need not necessarily indicate that he himself has this *gotra*; what is necessarily implied is that the family in which he is born is of a gotra which is different from that into which he is adopted. The adoption of a boy of the same *gotra* is considered better than the adoption of a boy of a different *gotra* and the adoption of such a boy is recommended before *Upanayana*, Manu says that the girl to be married should be *Pituhu Asagotra* in relation to the bridegroom (Sloka 5, Chapter III, Manu).

Q.—Does not the use of the word *Asagotra* imply that the girl to be married has a *gotra* of her own?

A.—Literally interpreted it does. But I know that those who hold that a girl has no *gotra* before marriage interpret *Asagotra* as *Asagotraja*. Here also I cannot name any author or give any reference as to this latter interpretation.

Q.—Even though *Upanayanam* has not been performed, does not a boy acquire a *gotra* on adoption?

A.—On adoption in the case of a boy there is said to be, as in the case of a girl on marriage, a *Gotraantara pravesa*. Whether this *Gotraantara pravesa* gives the adopted boy the *gotra* into which he is adopted, or whether it confers on him merely the title to belong to his gotra, is a point about which, I believe, there is difference of opinion. In this case also, I am not now in a position to quote authority.

Q.—Does not Manu at any rate, in Sloka 142, Chapter IX, declare that on adoption he acquires the *gotra* of the new family?

A.—I believe the Sloka does not say that he acquires it either merely on adoption or immediately after adoption.

Q.—Is it not the necessary inference?

A.—Such an inference may or may not be drawn.

Q.—Do you understand a person having a *gotra* to mean something different from his being born in a *gotra*?

A.—As I said before there are really two different views as to how a man takes his *gotra*. According to those who believe that a man gets his *gotra* by his birth there is no difference. While according to the others, who believe that the actual acquisition of the *gotra* results either from *Upanayana* or from *Vivaha* there is a difference. And I am inclined to believe in the latter view.

Q.—Is there anything in Manu to support this latter view?

A.—I was given to understand that my main business in this examination was in connection with the interpretation of Sanskrit passages, and not having known beforehand the lines on which I was to be cross-examined. I have not come prepared to quote chapter and verse for the various general opinions that have been in my mind in regard to the various points I have been cross-examined upon. I have therefore again to say that I cannot quote authorities. I cannot quote the authorities that support my view. I am bound according to rules of interpretation to understand *Haret* in the same sense both in reference to *gotra* and *riktha* which form the common object of the verb *Haret*.

Q.—If the correct view be that a *gotra* is acquired on birth, would you still adhere to your translation of *Haret* into "obtain."

A.—Yes, I would still adhere *Haret* is translatable into "take" or "carry."

Q.—How would you maintain that your translation is correct on the view that *gotra* arises on birth?

A.—The reason for my interpreting *Haret* as "shall obtain." I have given already in the explanation I gave as to the *Avakasa* of Slokas 141 and 142 of Manu, Chapter IX. I have there pointed out that Sloka 142 seems to contemplate the possibility of an adopted son trying to revert to his natural family and asserting special circumstances and in the way of contradicting such a possibility this Sloka says that the son who has been given away shall in no case obtain the *gotra* of his natural father. That being my

idea regarding the *Avakasa* of these two Slokas, I believe "obtain" is intelligible and appropriate, seeing that the adopted son has now to obtain what he had lost by adoption. "Shall obtain in no case" includes "re-obtaining" also.

Q.—Is there any other *sloka* before or after this that says that the adopted son loses *gotra* or *riktha*?

A.—I am not aware of any.

Q.—Assuming that the *gotra* arises on birth, your translation of *Haret* into "shall obtain" as regards *gotra* can be maintained only by understanding it as meaning "re-obtain"?

A.—I have not translated *Haret* into "shall obtain" on that supposition. But my translation on such a supposition cannot be maintained without taking the expression "shall in no case obtain" to mean "shall not re-obtain" as applied to this particular case.

Q.—On the view that *gotra* arises on birth, is it not the fact that you would have to understand "obtain" to mean "obtain" with reference to *Riktha* also according to the rule of interpretation which you accepted that the word *Haret* should be understood in the same sense with reference to both the objects *Gotra* and *Riktha*?

A.—In this question the idea that property also comes by birth is involved; if that be so, the suggested interpretation would be right in strict accordance with the Sloka of Manu.

Q.—If one obtains the *gotra* of his natural family before adoption and before *Upanayanam*, would not "obtain" in your translation have to be understood as "re-obtain"?

A.—I do not see how this question differs from the previous one. And my answer therefore is "Yes"?

Q.—If that be so with respect to *Riktha* or property acquired before adoption in the natural family, would it not be necessary to understand "obtain" as meaning "re-obtain"?

A.—Yes, I think so.

Q.—Is it not the fact that even though the father may be dead the property that may be divided any time after the death of the father may be described as *Paitrika Riktham* (father's property)?

A.—Although *Paitrika Riktham* literally means property belonging to the father, it is very commonly used to mean the

property of any ancestor or ancestors. Therefore I answer "Yes" to this question.

Q.—In Sloka 104, Manu Ch. IX, does *Paitrika Riktham* mean property which at the time of division belongs to the father or any other ancestor or which simply belonged before?

A.—If property cannot belong to a dead person, the property which is intended to be divided according to this *Sloka* is property which must have belonged to an ancestor, though it is expressly stated here that such property must have originally belonged to the father or the mother. The expression *Paitrika Dravya* in Sloka 209, Ch. IX, Manu means I believe the same thing as *Paitrika Riktha* in Sloka 104, Ch. IX, Manu, and what I said with regard to *Paitrika Riktha* would also apply to *Paitrika Dravya* referred to above and to *Pitriya Vasu* in Sloka 163, Ch. IX, Manu.

In Sloka 146, Ch. IX, Manu, property spoken of as *Bhraturdhanam* is the property of a brother who must have died previously. Athough the brother is dead his property is spoken of in the Sloka as brother's property. In Sloka 136, Adhyaya II, Yagnavalkya, property which belongs to a man before his death is spoken of as his property even after his death.

Q.—In Sloka 142, Ch. IX, Manu, although the *Janayitru* mentioned there may be dead at the time of the adoption, is the property which belonged to him before his death described as *Janayituh Riktham*?

A.—Yes, I think so. In general terms, property which belonged to any person before his or her death is often spoken of in the Smrithis as his or her property. It is difficult to give the exact etymological significance of the root "*Hru*" inasmuch, as even in the list of verbal roots given by Panini, the meaning of this particular root is given by means of the word derived from the root itself. "Swadha" is understood to mean by certain commentators and lexicographers the *Sraddha or Pindapradanam*. Commentators have so understood "Swadha" as used in Sloka 142, Ch. IX, Manu. I have not based my interpretation of "Swadha" in this Sloka on any authority so much as on my own reasoning. I do not know if my interpretation of "Swadha" is found in any dictionary.

Q.—If your interpretation of "Swadha" were correct, would it not involve the consequence that the "Pinda" or the "Sraddha"

might be offered even after the adoption, but the *Apurva* would not be generated?

A.—I do not see how it would.

Q.—According to your interpretation, there is no statement in the text as to whether "*Pinda*" and *Sraddha* are or are not offered by the adopted son to the manes in the natural family?

A.—*Gotra Rikthanugah Pindah* is distinct on the point.

Q.—The words *Gotra Rikthanugah Pindah* do not say anything more than that *gotra* and *riktha* follow the *Pinda*. It is your position that those words say that the *Pinda* goes away?

A.—My idea is that the duty of the son to offer the *Pinda* is logically dependent upon his right to the gotra and the property; when the latter ceases the former also goes.

Q.—Is it not a fact that an adopted son has under no circumstances to offer the *Pinda* to the members of his natural family?

A.—According to this Sloka he has not. *Na kvachit* may mean in no place, in no case, or never. The word *Haret* in Sloka 141, Ch. IX, Manu if interpreted as meaning "shall take" is not wrong but will be ambiguous inasmuch as such a rendering may imply the idea of "carrying."

There are four *Samskaras* before Upanayana namely *Jatakarana, Namakarana, Annaprasana and Choula.* Jatakarana is performed immediately after the child is born. All these *Samskaras* are performed to the boy as born in the *gotra* of his father. I do not know that each subsequent *Samskaram* strengthens the tie of the boy to his natural family, and if so, how far. I said that *Upanayanam* confirmed the boy in the gotra in which he was born.

Q.—I take it from that that the boy had the *gotra* before Upanayanam and that Upanayanam only tends to strengthen the connection of the boy with the *gotra*?

A.—The Smrithi law does not contemplate the case of a person who having been born in a *Dwija* family can be altogether *gotra*-less.

The division of the compound word *Sagotrah* is *Samanah gotrah-yasya sah* which means "he who has the same *gotra* as another." An *anupanitha* (*i. e.*, a person whose *Upanayanam*

has not been performed) does not come within the rule that *sagotras* are entitled to inherit.

Q.—Assuming that *Upanayanam* has not been performed at the time of the adoption, does a boy according to Sloka 142, Ch. IX, Manu, lose his *Gotrajatwa* (*i. e.*, his being born of the *gotra* of his natural family) ?

A.—If I understand this question aright my answer is that the incident of his adoption cannot contradict the fact of his having been born in the *gotra* of his natural father.

Q.—So you say even after adoption such a boy is the *Gotraja* of that family ?

A.—I believe so.

Q.—Does it not follow that according to your interpretation of when *gotra* attaches to a man, an adopted son whose *Upanayanam* was not performed in his natural family being still a *gotraja* in his natural family, may still inherit to the members of his natural family ?

A.—The incident of adoption seems however to counteract the title to inheritance on the basis of *Gotrajatwa*.

Q.—Does not Sloka 142, Ch. IX, Manu say that the adopted boy is not entitled to take the property of his natural family by reason of the fact of his ceasing to be a gotraja of his natural family ?

A.—I believe I have answered this question already that adoption seems from this Sloka to contradict the title of the adopted son to inherit the property of his natural family on the ground of his being a *gotraja* thereof.

I have seen three telugu editions, one grandha edition, and two devanagara editions of Manu. They all give the reading *Haret* in Sloka 142 Ch. IX, Manu. Our Pundits are in the habit of quoting from memory even in writing books and commentaries. In consequence of this practice, slight misquotations with slight variations of several kinds are possible and do occur. From my knowledge of *Nibandhana* treatises, such practice on the part of the pundits and such possibility of such misquotations seem to have occurred for long in the history of the development of Smrithi literature. According to that Sloka 142 Ch. IX Manu it is not possible to make out how the giving away of a son in adoption takes away the title of others to offer *Pinda* to the giver of that

son in adoption. The title of the offerer of the *pinda* to offer it is correlative to the title of the particular *Pitri* to receive such an offering.

Q.—With reference to the *Avakasa* of Sloka 142, may it not be that having stated that the adopted son is certainly to take property in the adoptive family, the question is raised whether he is to have the property of both families?

A.—The reason why I prefer my idea of what the *Avakasa* here is to what has been suggested in this question is this. I believe the Smrithi law does not concern itself so much with the giving of a superfluity of advantage as with the correction of what is apt to be inequitable. My reason for that belief is the general impression left in my mind by the tendency of the Smrithi law so far as I have been acquainted with it.

In Sarvagnanaryana's commentary on Sloka 142, Ch. IX, Manu, it is said that the *Sloka* states that the adopted son has no relation *Sambandha* with the property of the natural father. Raghavananda also uses the term *Sambandha* similarly in commenting on this Sloka. In the first line of Medhatithi's commentary on Sloka 142, Ch. IX, Manu, the terms *Itaha* and *Thataha* are correlated. The words *Itascha* in the first line of this commentary mean 'for this (reason) also". The *Cha* "also" implies that Sloka 142 gives a reason in addition to what Medhatithi has stated in his commentary on the immediately preceding Sloka for the adopted son obtaining a share in the property of the adoptive family.

Q.—From this interpretation of this passage would it not be more correct to have *Yuktam*, instead of (*tu-uktum*).

A.—I have already said that the passage makes sense well enough without the suggested alteration. The alteration may perhaps make the point clearer, Taking *Tu-uktam* and *Yuktam* misprinting the one for the other in Devanagari characters is very possible. Taking the reading *Tu-uktam* I take it that *Tu* and *Twa* do not necessarily conflict with each other.

Q.—Is not the passage in Mechatithi's commentary on Sloka 142, Ch. IX, Manu beginning with *Uttarastu* and ending with *Vaktavyam* which you have already translated, obscure?

A.—It is not easily intelligible, but it is not so obscure as to be untranslatable.

Q.—What is the purport of your translation of that passage?

A.—To explain the purport of the portion translated I must state briefly what precedes it. The idea is that by taking the *Haret* as a " submerged " causal form, the adopted son is called upon not to allow anybody other than himself to inherit the property of his natural father, and the latter half of the sloka is, on this ground, supposed to give the reason why the adopted son should do so. If the adopted son does not inherit the *gotra* and *riktha*, it is held that he cannot offer the Pinda. And to let the dead father go without the offering of the Pinda is not permissible. Therefore *i.e.*, because the *Swadha* of the giver thus goes away, the given away son must inherit the *gotra* and *riktha* of his natural father. But on the above supposition of the submerged causal form, the given-away son has to inherit the *gotra* and the property of his natural father. That he does not so inherit them is not mentioned in this sloka. Now comes the portion which is perhaps even more obscure than what I have already explained. It may be asked what authority *Pramana* there is for bestowing this title to inherit the *gotra* and *riktha* of the natural father on the given-away son?. And the answer to such a question is that such an authority is not wanted when there is this other meaning to the sloka itself. The whole passage beginning with *Anyetu* takes a view which Medhatithi does not accept. I attach no legal meaning to the word *inherit* in this explanation and I do not know what such legal meaning is.

The word *Amsa* in Sloka 201, Ch. IX, Manu, which I have translated as *share* may mean a part or the whole according to circumstances. The meaning " have or possess " may be one of the dictionary meanings of *Labhet* and its plural form, but I do not know how those forms can be so used nor do I remember any passage in which they are so used. The words *Prapnuyat* and *Apnuyat* cannot have the meaning " have " according to me. That may be one of the dictionary meanings of those words. *Swa* when used as a noun in the neuter gender means property; *Swatva* which I have translated as " ownness " is an abstract noun derived from the pronominal *Swam*, *Swaha* as a pronoun means a man's own. It does mean sometimes, " also one's own self ". How we have to interpret the word depends upon the context. *Swatva* may also be derived from *Swa* meaning property. I do not believe how it can be easily made to mean proprietary

right when dictionaries say that *Swatva* means ownership or proprietary right. I do not mean to hold that they are wrong, but I am inclined that they give a forced meaning which is therefore inaccurate. And if dictionaries do not give the meaning "ownness", I do not believe they are wrong in omitting that meaning because the term ownness though easily intelligible is uncommon in English. And if the dictionaries do not give any meaning corresponding to ownness, I am convinced that they must be deemed to be incomplete. I am prepared to accept (यथेच्छाविनियोगयोग्यत्व) as an interpretation of *Swatva* when it means the quality of being property. But in the sense in which I have translated *Swatva* as derived from the pronominal *Swa* that definition is not applicable. To coin another strange word, the given definition defines what may be mentioned as 'propertiness', (यथेच्छाविनियोगयोग्यत्व) may be translated as "the fitness to be used or spent in the way (one) likes."

Q.—Have you any authority for understanding the word *Swatva* in the passages you have translated as not derived from the neuter nominal *Swa* but as derived from the pronominal *Swa*.

A.—My authority is the context; in the context the *Swatva* of the given-away son in the *Dhana* of the giver is what is spoken of. It is not the "propertiness" of any property that is under discussion but what is under discussion is "whose own the giver's property has to be". The sense of ownership or proprietary right of the word *Swatva* in relation to *Dhana* in the natural family would quite fit in with the context but would not be quite so accurate and would not convey exactly the same meaning. I mean it would not be quite so accurate only in the sense that it would not convey my meaning which I consider to be the more accurate of the two. When I said that Sloka 141, Ch. IX, Manu, was a statement of an exception to a general rule contained in Sloka 163, Ch. IX, Manu, and elsewhere, I had not in my mind any other explicit statement of the same rule in Manu. But I know that is impliedly taken for granted in more than one place in Manu, although I cannot now quote chapter and verse.

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Re-examination.

* * * *

Q.—If the period of pollution for a person dying before *Upanayanam* were the normal period of ten days, would this

circumstance throw any light on your view that a man is confirmed in his gotra by *Upanayanam.*

A.—It goes to strengthen my view.

Q.—With reference to your answer that when a girl is given in marriage it is recognised that she is born in a particular gotra, please translate the passage at page 12 of *Smartanukramanika* edited by Parvatam Narashimha Sastri now put into your hands ?

A.—I translate the passage thus. They go to the giver of the maiden and say (as follows) on behalf of the great-grandson of Kesava Sarman of the Kasyapa gotra which is associated with the three Pravara Rishis known as Kasyapa, Avatsara and Nidhriva, to the grandson of Narayna Sarman of above Kasyapa gotra and to the son of Madhava Sarman of the above *gotra, i. e.,* to the bridegroom Srinivasa Sarman of the same Kasyapa *gotra,* we request for the purpose of getting lawful children, the maiden, *i.e.,* the bride, who is the great grand-daughter of Govinda Sarman of the Kaundinya *gotra* associated with the three *Pravara* Rishis Vasishta, Mitravaruna and Kaundinya, the grand-daughter of Vishnu Sarman of the above said gotra and daughter of Madhu Sudana Sarman of the said gotra, her who has the name of Lakshmi and is born in the Kaundinya gotra."

* * * * *

Q.—If you find that *Madhava,* (?) the commentator of Manu and the authors of the Mitakshara,, Parasara Madhaviya, Smrithi Chandrika, Viramitrodya, Vyavaharamayukha and the Datta-kamimamsa give the Sloka 142 Ch. IX Manu with the word *Bhajet,* and the word *Haret* is to be found in the printed editions of Manu, which would you consider to be the correct reading.

A.—The authors mentioned in the question are all considered to be highly authoritative in expounding Smrithi law and Smrithi literature. But what authority really there is in support of the reading found in the current editions of Manu is almost impossible now to estimate. And since I see there is no difference in the sense between the form of the Sloka as quoted and as embodied in the current editions of Manu, I am compelled to take both of them to be equally correct till something more definite is known regarding the authority on which the reading in the current editions is based.

Q.—If there were any difference in meaning between the words *Haret* and *Bhajet* as used in that Sloka, which reading would you accept as correct?

A.—I would then naturally rely on the quotation made by such a large number of authoritative writers, more than on the single printed recension.

Q.—If the word *Haret*, be translated into "shall carry," can the word be appropriately used to signify the carrying of what is one's own?

A.—I have already said that to translate *Haret* as "shall carry" is wrong. If it, however, be hypothetically so interpreted the "carrying" referred to in the context cannot relate to what is one's own. The ordinary and natural meaning of *Haret* is not "shall re-obtain."

Q.—Would the translation of "*Haret*" into "re-obtain" be correct in the following case, on the supposition that gotra arises on birth?

When a father possessed of self-acquired property gives his son in adoption and the son at the time of adoption, has no right to the property.

A.—To translate "Haret" as "shall re-obtain" would be wrong in any case. And I need not say that it would be so in this case also.

Q.—With reference to your last answer, please explain your answer to Mr. Krishnaswamy Iyer's question "assuming that the Gothra..... as meaning *re-obtain*?"

A.—As I said above, I am positive about translating '*Haret*' as "shall obtain". "Obtaining" means what they call "*Prapti*" in Sanskrit, *i.e.*, coming into the possession of a thing of which you were not then in possession, irrespective of the reason why you were not then in possession thereof. If in any case it so happens that the thing into the possession of which you come and of which you were not in possession then is a thing of which you had been in possession before and the possession of which you had lost later on, in that case alone—does *obtain* come to mean "re-obtain" also; or, in other words, as it is sometimes expressed by Sanskrit Pandits "*Prapti*" includes both *Alabdha Labha and Nashta Labha*, which interpreted means that "obtaining" includes "the coming into possession of what you had not before" as well as "of what you had not lost." It

is in the case where "Prapti" means Nashta Labha that "obtain" has to be understood in the sense "re-obtain," though *Haret* is translated only as "shall obtain." The meaning of "re-obtaining," which is also "obtaining," has to be derived from the sense of the term *Haret* only in the case referred to above and necessarily so in such a case.

Q.—If the same verb governs two objects in a sentence, and if it is necessary having regard to the nature of one of the objects to give a secondary sense to the verb as applied to that object, do the rules of interpretation require that the verb should be understood in a secondary sense with reference to that object?

A.—The rules of interpretation embodied in the Purva Mimamsa relate to the interpretation of authoritative scriptures based on revelation directly or ultimately. The sentences of command found in the scripture so as to impose obligations and restraints and give also directions are all taken to be fully authoritative whatever be the nature of their verbal composition. This being so, the rule, according to which a verb of command has to be similarly related to all its objects, gives us what is absolutely the best method of interpretation in the case. But where by adopting this rule incongruities and irrationalities come unavoidably into existence we have another rule by following which we make the scriptual commands, rational and consistent. This is done by observing the rule which says that when the primary and natural significance of the verb of command is not without inconsistency applicable to either of the two objects related to that verb, then in relation to such an object the verb shall have a secondary significance. Thus if on a certain supposition the primary and natural significance of *Haret* cannot be quite exactly the same in relation to *gotra* as in relation to *Riktha*, then since the command given by Manu is taken to be authoritative as commands found in the Vedas, we are bound in accordance with the rules of Purva Mimamsa to interpret *Haret* in its relation to *gotra* in whatever secondary sense would make that command consistent and rational. This rule to which I have referred in no way compels us to give up the primary and natural significance of *Haret* in relation to *Riktha* which is its other object.

Q.—Having regard to the intangible character of *gotra* and the tangible character of *riktha* would *gotra* and *riktha* be capable

of being the objects of taking, carrying, obtaining or re-obtaining in the same way and sense?

A.—I understand this question to be based upon what may be considered to be a very possible misunderstanding of the Mimamsa rule of interpretation put to me in cross-examination. What that rule really requires is that both *gotra* and *riktha* should possess what in Sanskrit would be called *Haranarhatwa* or "obtainability" as it may be translated into English. And in reference to the meaning of "obtaining" I have already given, it is easy to see that there is such an "obtainability" in relation to both of them. The tangibility of the one object and the intangibility of the other do not in any way contradict their common obtainability.

Q.—Assuming that in Manu's time and according to Manu a son had no interest in the property of the natural father during the life-time of his parents, how would you construe the word *Haret* in relation to the word *riktha* in Sloka 142, Ch. IX, Manu?

A.—Manu does not contemplate, because of the assumption made above and found in Manu, the adoption of a person who may be characterised as *Hritariktha i.e.*, he who has already come into possession of what he has to inherit. Therefore also it is that I have been so emphatic in regard to my translation that *Haret* can mean nothing other than "shall obtain."

Q.—With reference to the rule that stress is not to be laid upon the gender of the *Uddesya* in a rule, do you say that the word *Janayithu* is part of the *Uddesya* or *Vidheya*.

A.—I am glad that this question gives me an opportunity to correct an oversight which I committed in course of the trying cross-examination to which I was subjected. *Janayithu* qualifies and so defines the *Riktha*. Therefore it is not directly related to the *Uddesya* not to say that it is not itself the *Uddesya*. Nevertheless I feel that I may not be altogether wrong in having said that here also the *linga* or gender of the term *Janayithuh* is perhaps *Avivakshita*. The term *Janayithu*, however understood is here a part of the *Vidheya*.

Q.—Assuming that under the law the adopted son is not entitled to the property of *not only* his natural father but also the other members of his natural family, such as grandfather and

uncle, and that such a rule were based upon the text of Manu, sloka 142 Ch. IX, would it be based upon the construction of the word *Janayithu* itself or would it be an inference from the sloka ?

A.—I believe I have made myself clear upon this point already by saying that *Janayitru* can be made to mean anything more or other than the natural father only by implication and inference.

Q.—Mr. Krishna Kamala Bhattachari says that, according to the rules of Panini *Paitrika* means "*descended or come from the father,*" Do yeu agree with him ?

A.—The formation of this word distinctly shows that *Paitrika* is whatever is derived or descended from "*Pitru.*"

SUMMARY OF ENGLISH CASES.

Attorney General *v.* **Great Northern Railway:** (1916) 2 A. C. 356.

Highway—Bridge over highway—Increase of traffic—Standard of maintenance—Railway clauses Consolidation Act, 1845 S. 46.

Where a Railway line had to cross a highway and the private Act of Parliament authorised it by S. 46 to be done by building maintaining and repairing a bridge by which the highway was carried over the Railway and since the opening of the Railway, the traffic on the high way had considerably increased and it was found that the bridge could not stand the weight of heavy motor traffic, the question arose whether the liability of the Railway Company was to maintain the strength of the bridge as at the date of the construction of the Railway or to alter it to suit the exigencies of traffic.

Held, under such circumstances, the duty of the Railway Company as regards the maintenance and strength of the bridge was to be found in the Act and if the Act makes provision for the same, the general principle that "where persons acting under statutory authority for their own purposes interrupt a highway by some work which renders it impossible for the public to use it, an obligation is *prima facie* imposed on them to construct such works as may be necessary to restore to the public, the use of the

highway so interrupted and that the obligation so imposed is of a continuing nature involving not only the construction of such works but also their maintenance" has no application.

All the noble Lords excepting Viscount Haldane agreed on the construction of the Act, that the liability of the Railway Company was only to maintain the bridge as at the date of its construction.

Viscount Haldane held that the Act did not touch the present question and that the general rule mentioned above applied.

Boord and Son (Incorporated) *v.* Bagots, Hutten and Company Limited: (1916) 2 A. C. 382.

Trade mark—Registration—Similarity of device—Cat mark for gin—Trade marks Act 1905 Ss. 11, 19, 40.

The applicant prayed for registration of a trade mark for gin consisting of a pictorial label resembling a puss in bottle. The opponent had used a mark with a cat on and had a large sale in the United Kingdom and the East. There was no resemblance between the applicant's device and that of the opponent. The opponent objected that though there was no similarity between the two devices, his gin commanded a large sale in the East under the name of Cat Brand and as such the applicant's device should not be registered. In the absence of an intention to deceive on the part of the applicant and in the absence of any resemblance between the two devices, their Lordships held that there was no objection to the registration of the applicant's device and that the possibility of confusion arising from the insufficient description of the opponent's mark by ignorant people in foreign markets was not a ground for refusing registration.

In re **Garnham, Tylor *v.* Baker**: (1916) 2 Ch. 413.

Rule against Perpetuities—Gift offending against—Gift to bachelor for life with remainder to any wife he may marry with remainder to his children—Validity.

Under a gift to a bachelor for life with remainder to any wife he may marry with remainder to his children the class of children is ascertained upon the death of the first tenant for life,

although the enjoyment may be postponed during a life tenancy of a person who may have been unborn at the date of the gift. Such a gift therefore does not offend against the rule against perpetuities.

In re **Musgrave, Machell** *v.* **Parry**: (1916) 2 Ch. 417.

Payment under mistake of law—Recovery of amount so paid when allowed—Administration of estate of deceased person—Over payment by Trustee to cestuique trust under honest mistake—Court's power to adjust rights between trustee and cestuique trust.

The doctrine that a man cannot recover money which he has paid under a mistake of law has been very substantially limited in recent times and the mere fact that a mistake is an honest mistake of law, as long as it is not a mistake of public law, which every one is bound to know, has not prevented the courts from giving relief to one party as against the other doing justice between the parties.

When administering an estate of a deceased person the court will, in cases where trustees have under an honest and so to speak permissible mistake of construction or of fact overpaid one beneficiary, adjust the rights between the cestuique trust and the trustee in order that the latter may so far as possible be recouped the money which he has in advisedly paid.

In re **Yenidje Tobacco Company, Ltd.**: (1916) 2 Ch. 426 C.A.

Dissolution—Ordinary Partnership—Partnership in the guise of a Private Company—Dissolution—Grounds—Deadlock due to quarrels between partners if a good ground.

Where there are only two persons interested in a Company, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the Company ought to be wound up if there exists such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other.

In the case of an ordinary partnership between two people having equal shares the fact that a complete deadlock has arisen

owing to the disputes between the partners is a good ground for dissolution. It is also a good ground for dissolution of what may fairly be called a partnership in the guise of a private Company.

Rex *v.* **Banks**: (1916) 2 K. B. 621.

Duty of Prosecuting Counsel.

Prosecuting Counsel ought not to press for a conviction. They should "regard themselves" rather "as ministers of justice" assisting in its administration than as advocates.

St. Enoch Shipping Company Ltd. *v.* **Phosphate Mining Co.**: (1916) 2 K. B. 624.

Pro rata Freight—Claim to—Maintainability—Conditions—Quantum Meruit—Recovery on a, when allowed.

To justify a claim for *pro rata* freight, there must be a voluntary acceptance of the goods at an intermediate port, in such a mode as to raise a fair inference that the further carriage of the goods was intentionally dispensed with. The consignee must accept the goods in such a way as to imply that he and the shipowner agree that the goods have been carried far enough and that the shorter transit shall be substituted for that named in the original contract.

To recover on a quantum meruit it is necessary to show a contract. When the amount to be paid is left in doubt it is measured by the merits of the services rendered; but there must be services expressly or impliedly asked for and to be paid for or agreed to be rendered and paid for. If a contract once made becomes impossible of performance, then in the absence of some new agreement the parties remain in the circumstances in which they find themselves. There is no new obligation upon one party to pay money to the other unless there is some contract to that effect.

Cone *v.* **Employees' Liability Assurance Corporation, Ltd.**: (1916) 2 K. B. 629.

Insurance Policies—Maxim "Causa proxima non remota spectatur"—Applicability—Use of words "directly or indirectly"—Effect.

To all policies of insurance the maxim "causa proxima non remota spectatur" is to be applied if possible. For that reason, when there are words which at first sight go a little further they are still construed in accordance with that universal maxim. Where the words used in a Life Insurance Policy were caused directly or indirectly by war held that the applicability of the maxim was excluded by those words and that a more remote link in the chain of causation was contemplated than the proximate and immediate cause.

Rex *v.* **Baskerville**: (1913) 2 K. B. 658.

Accomplice—Evidence of—Corroboration—Necessity—Nature required—Practice.

There is no doubt that the uncorroborated evidence of an accomplice is admissible in law. But it has long been a rule of practice at common law for the Judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices and in the discretion of the judge to advise them not to convict upon such evidence; but the Judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence. This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal Act came into operation the absence of such a warning by the Judge has been held to be a ground for quashing the conviction.

Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

The Ningchow: (1916) P. 221.

Pledge of goods—Contract of—Incidents—Right of pledgee to sell on default in payment—Pledgor's right to redeem—Contract for sale by pledgee after notice to pledgor—Effect.

A contract of pledge carries with it the implication that the security may be made available to satisfy the obligation, and enables the pledgee in possession to sell on default in payment

and after notice to the pledgor, although the pledgor may redeem at any moment up to sale *i.e.*, at any moment up to the time of the exercise by the pledgee of his power of sale by entering into a valid contract of sale. Thereafter the pledgor's right to redeem is lost and he ceases to be owner of the goods.

JOTTINGS AND CUTTINGS.

Miscellany.—Not a few things of special interest to lawyers some more surprising than interesting are to be found in Treitschke's 'Politics,' a translation of which has recently been published, with an Introduction by Mr. Balfour. Here, for instance, is one of the surprising things: 'England is continually proclaiming martial law. No year passes without the Riot Act being read in some part of the United Kingdom.' That is certainly a pretty starting statement even from a German professor with a reputation for accurate observation. It is equalled only by this statement: 'In England a civil suit is so expensive that it is only within reach of the rich; the small tenant cannot bring an action against his landlord because its costs are prohibitive.' Litigation is certainly too costly in this country, but happily, it is not quite so bad as that. Treitschke has, however, something favourable to say of our judicial system. 'Trial by jury,' he says, 'has had a magnificent development in England, where it is closely bound up with popular ideals and regarded as a pillar of English freedom. Two circumstances have powerfully contributed to this result. Firstly, the unique social and economic position of the judges.....Secondly, English judges are obliged to observe a reticence which is well suited to enhance the dignity of the Bench.' Treitschke approves, too, 'the stern English rule of unanimity.' He regards it, 'together with the powerful influence exercised on lay opinion by a highly esteemed body of Judges,' as 'the chief cause of the historic respect paid to the jury system in England.' To this rule of unanimity, he says, 'Englishmen have clung with a tenacity that does them honour.'

Treitschke, though a profound admirer of most things German, has a word of censure for the German Press. 'In our own country,' he writes, 'the so-called "revolver Press" has wrought untold mischief. If a crime is attributed to any individual a newspaper article is hurriedly composed and a proof sent

to the incriminated person, who is then compelled to purchase its suppression. There have been journals in Vienna which subsisted on this traffic only.' This is written in support of his contention that the right of public accusation should not be left in the hands of private individuals, but that the right of indictment should belong only to a public prosecutor. That is certainly an arguable matter. What would appear to be beyond all dispute is the corruption of the German Press.—*The Law Journal, October 7*, 1916.

CONTEMPORARY LEGAL LITERATURE.

The *American Law Review* for September-October contains an interesting article from Mr. James Byrne as to *the probable changes in the laws of war* as a result of the experience learned in the present world war. He thinks that it is probable that after this war, nations agree that all private property on sea should be immune from capture, in other words agree to adopt the doctrine of *free sea* but at the same time he thinks, England cannot agree to it unless the other nations agree to the maintenance of the present relative naval preponderance of England. At the first Hague Conference, (1899) England was prepared to abandon the principle of contrabrand in case of war between nations which sign a convention to that effect but the other great powers were against it, including the United States of America. It is somewhat curious that it was so; for some fifty years previously a Secretary of state of the United States of America had himself made a similar proposal.

At the first Hague Conference, a Russian delegate proposed to prohibit the use of projectiles charged with explosives which diffused asphyxiating or deleterious gases. Denmark, Austria Hungary, France, and Great Britain supported it. Ultimately, however, England and the United States voted against the prohibition, the other states supporting. The experience of this war is not such as to induce the powers to contend for sanction to its use. Nor is civilised opinion equally with expediency likely to pronounce in favour of the hurling of bombs from the air. They only shock the world without any compensating military advantage.

Another paper in the same journal deals with the position of the *Governor* under the American constitution. In the Governor is

vested the supreme executive power in every State. As a result of this power, there is usually charged to him the duty to see that the laws are faithfully executed. He is usually elected on the November election day although in some places the dates vary. The Election is a direct Election and the electors are the qualified electors of the State typically described in Massachussets as "every male citizen of 21 years of age and upwards except paupers and persons under guardianship." The constitutional qualifications of the Governor are not severe in any State and in some they are absolutely negligible. A rather unusual qualification is the religious one required in S. Carolina that the Governor must not deny the existence of a Supreme Being. In most States, he must have attained the age of 30, though in some he is eligible at 25, in one alone, 35 being the required age. In only 3 constitutions the candidate is expressly declared disqualified by conviction for a crime. Only 3 constitutions declare that the candidate must be a male. By far the most important disqualification is the prohibition against dual office holding. The first duty of the Governor is to take the oath of office. Some States prohibit re-election, others re-election for more than specified terms, while yet some others prohibit re-election for a certain time. The salary of the Governor ranges from 1,500 dollars in Oregan to 10,000 dollars in California and New York, possible of increase but not of decrease during the term of Office. In some of the States the Governor has an advisory body of councillors. As the chief executive officer he must transact all necessary business with the Officers of Government, Civil and Military. He is also the official representative of the State and conducts in person all intercourse with the other States and the United States. He has large powers of appointment though these have specially to be conferred and do not inhere in his Office. He has also the power of making *adinterim* appointments and where authorised, the power to remove Officers; bills are to be presented to him for approval. If he approves them, they become law; if he does not, he has to send it back with his objections. The veto can however be overridden by the legislature. In most States, in addition to the power to veto bills, he has power to veto items in appropriation bills. He has the power to pardon for all offences except treason and impeachable offences. Another important power is that over the militia as Commander-in-Chief. He may call out the militia

to execute laws, suppress insurrection, repel invasion and preserve the public peace. One of the duties placed upon the State executive is to deliver up any person charged in any other State with treason, felony or other crime "who shall flee from justice to be found in his State." The Governor has no general authority to contract in the name of the State. He is liable to impeachment for high crimes, misdemeanours and malfeasance in office; six States have specifically branded drunkenness as a ground for impeachment.

In another part of the same journal, an attempt is made to expose the hollowness of the German defence for putting to death Captain Fryatt. The German defence is that the rules as to cruisers cannot apply to submarines which are a new weapon of destruction, that the right rule to apply to them is that applicable to land warfare namely that the civilians have no right to defend themselves against regular military forces and if any merchantman chose to defend itself, the crew may be dealt with as franc-tireurs &c. But in urging the defence, it is overlooked that the same line of argument if pursued should protect enemy, *a fortiori* neutral merchantmen unless they carry contrabrand or break through the blockade.

BOOK REVIEWS.

THE INDIAN DECISIONS. (*New Series*) *High Court Reports Madras, Vol. II. Law Printing House, Madras.*

We have drawn attention to the excellence of this publication in reviewing the first Volume. The volume under review completes the Madras High Court Reports and comprises Volumes 5 to 8. The profession has to thank the Law Printing House for securing them a complete set of the Madras High Court Reports in such attractive form and for a comparatively low price.

THE LAW OF IMPARTIBLE PROPERTY IN INDIA *by J. C. Ghose. Second Edition, 1916. R. Cambray & Co. Calcutta.*

This Volume appeared in 1906 and formed a portion of the Tagore Law Lectures for 1904 which included also the subject of endowments. Since then the subject has so much developed and has necessitated a separate volume for the law of impartible

property only. The author has in this Edition rewritten many portions of the work and the Case law has been brought down to Septembr 1916. There is an appendix to the Volume giving the important enactments of each Province on the subject of impartible property. We should however wish that the Madras Impartible Estates Act of 1904 which prohibits alienations of the Chief Impartible Estates in this Presidency except under certain conditions should have been given among the Madras enactments and its effect on the settled law as to alienations of impartible estates considered.

THE TAMIL LAW JOURNAL (*Vyavahara Chintamani*) is the first thing of its kind in this part of the country and we are glad to find that it has already obtained a substantial amount of support and appreciation. So far as we have been able to see the selection of cases seems to be done with much care and the statement of the facts and the decision in each case is accurate. We are however not without doubts whether the ordinary layman can profit much by the study of this kind of literature which in spite of the legal theory of every man's knowledge of the law is becoming more and more specialised day by day. And while not unmindful of the merits of the Journal as a literary language we hope we may be pardoned for venturing to doubt its efficiency as a medium for the expression of complicated legal ideas. The experiment however must be made one day or another, if legal literature is ever to be made familiar in at least some degree to the ordinary citizen, in his own mother tongue. A half knowledge is a dangerous thing and a smattering of case law derived by busybodies from this kind of publication may be productive of more harm than good; but we hope that a wider diffusion of this kind of knowledge amongst the litigant public will in the long run make the publication a really useful one. The subscription is so fixed as to place the Journal within the easy reach of all.

[*End of Vol. XXXI.*]
