Madras High Court
(Minor) Palanivel ... vs Sivakami Ammal on 1 April, 1925
Equivalent citations: AIR 1925 Mad 841, 90 Ind Cas 165
Author: V Rao
JUDGMENT Venkatasubba Rao, J.

1. The question that is raised by this appeal is whether in execution of a decree for mesne profits, the shares of the sons of the judgment-debtor, in the joint family property, are liable to be attached and sold. It is contended for the sons, that the obligation, recognised by the decree, is in respect of a debt, which it is not the pious duty of the sons, under the Hindu Law, to discharge.

2. In regard to the application of the rule enunciated in the ancient Hindu Law Texts, the Courts were confronted, from time to time, with great difficulty. The bare statement of the rule is simple enough. But it was found inadequate, when it had to be applied to different and various sets of facts. The result has been want of uniformity in the interpretations, as well as the application of the rule. The large body of case-law on the subject, will show that the Judges, while theoretically seeming to accept the rule itself, have had to decide each case, on grounds, as far as possible, of equity, justice and good conscience.

3. A very full, able and careful argument was addressed to us by Mr. Venkatasubramania Iyer, the learned Counsel for the appellants and he strongly contended that the son is not bound to satisfy a decree for mesne profits, passed against the father.

4. I shall first cite the texts, which have a bearing on this question. (See Ghose's Hindu Law, Third Edition, Vol. I, p. 531 Et. Seq.) (1) That son alone, on whom he throws his debt and through whom he obtains immortality, is begotten for the fulfilment of the law.

(2) But money due by a surety or idly promised, or lost by play, or due for spirituous liquor, or what remains unpaid of a fine and a tax or duty, the son, (of the party owing it) shall not be obliged to pay.

Manu.

5. Money due by a surety, a commercial debt, a fee due to the parents of the bride, debts contracted for spirituous liquor, or in gambling, and a fine shall not involve the I sons of the debtor.

Gautama.

(1) If a father has gone abroad, or been subdued by calamity, his debt shall be paid by his sons and grandsons; on their denial, the debt must be proved by witnesses.

(2) A son has not to pay, in this world, his father's debt, incurred for spirituous liquor, for gratification of lust, or in gambling, nor a fine or what remains unpaid of a toll : nor (shall he make good) idle gifts.

Yagnavalkya.

6. A son must pay a debt, contracted by his father, excepting those debts which have been contracted from love, anger for spirituous liquor, games or bailments.

(The words in the text translated as "contracted from love, anger" are kama krodha keritam.) Narada.

7. Sons shall not be made to pay (a debt incurred by their father) for spirituous liquor, for idle gifts, for promises made under the influence of love or wrath or for suretyship; nor balance of fine or toll (liquidated in part by their father).

8. (Promises made "under the influence of love or wrath" is the translation of kama krodha Pratisrutham.) Brihaspathi.

9. The son has not to pay a fine, or the balance of a fine or tax (or toll) or its balance (due by the father) nor (Avyavaharika or not Vyavaharika) that which is not proper.

10. (Vyasa according to the Ratnakara but Usanas according to the Mitakshara.)

11. Subject to the following exceptions, the texts mention certain specific debts as those, which the son is not bound to pay. In this connection, these debts specially enumerated present no difficulty. The exceptions are the following : Narada and Brihaspati use a general expression, "debts of love or anger." Usanas uses the word "Avyavaharika." It is the exact import of these general expressions that requires careful examination. I shall, at once, deal with the expression Avyavaharika and postpone the discussion of the words "debts of love or anger," to a later part of my judgment. There has been a conflict of opinion, as regards what this word means.

12. In Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348, Knight and Chandararkar, JJ., say that it means more than illegal and immoral and that under the texts, the son is not liable for debts, which the father ought not, as a decent and respectable man, to have incurred, that the son is answerable for the debts legitimately incurred by his father and not for those attributable to his failings, follies or caprices. This decision cannot now be regarded as good law, for, judged by this test, the son must be exempt from many debts for which, he is, at the present day, without question, held liable. This interpretation does not seem to have met with the approval of Scott, C.J., and Shaw, J., in two later Bombay cases, Ramakrishna v. Narain (1916) 40 Bom. 126 and Hanmant Kashinath v. Ganesh Annaji (1919) 43 Bom. 612. In Chhakauri Mahton v. Ganga Prasad (1912) 39 Cal. 862 Mookerjee, J., observes that he is not satisfied that the interpretation adopted in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348 is quite accurate (p. 868) and that the decision places too restricted a construction upon the term Vyavaharika and excludes debts, for which the son may be held legitimately liable (p. 874). Sadasiva Iyer, J., in Venugopala Naidu v. Bamanadhan Chetty (1914) 37 Mad. 458 also disapproves of the interpretation of Knight and Chandavarkar, JJ., and seems disposed to adopt Colebrooke's translation namely, "debt incurred for a cause repugnant to good morals."

13. Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348 has according to Mookerjee, J., placed too restricted a construction on the expression Avyavaharika; what is the true import of that word? As deduced from the cases, which have refused to recognise the narrow interpretation, the right meaning may be said to be "grossly immoral or flagrantly unjust." No case has said, in so many words, that this is the true meaning; but this interpretation alone furnishes the key to the proper understanding of the decisions. I am prepared to hold that this is the correct construction.

14. I shall first deal with the group of cases where the question of the pious obligation arose, in connection with the liability of the father, to account for moneys, received by him as agent, trustee, or in any other capacity.

15. Natesayyan v. Ponnusami (1893) 16 Mad. 99 : In this case, the defendant's father collected sums of money, on account of plaintiff's family, but neither paid them nor accounted for them. The sons were held liable, although the learned Judges expressed the view, that the transaction was a dishonest one, on the defendants' father's part.

16. In Venugopala Naidu v. Ramanadhan Chetty (1914) 37 Mad. 458, the father was accountable as trustee, for certain sums and the sons were held liable, on the footing of general principles of morality, referred to in Natesayyan v. Ponnusami (1893) 16 Mad. 99. The ground of the decision is that it is a sacred obligation to restore, to those lawfully entitled, the money unlawfully retained. The learned Judges observe:

Upon any intelligible principle of morality, a debt due by the father, by reason of his having retained for himself, money which he was bound to pay to another would be a debt of the most sacred obligation for the non-discharge of which punishment, in a future state, might be expected to be inflicted, if any.

17. With all respect, this statement does not correctly interpret the Hindu Law. Every debt, that is justly due, is not necessarily a debt, not tainted with illegality or immorality. On this principle, if a father steals money, is it not equally incumbent upon the sons to pay it back? It is not, however, disputed that the son is under no such obligation. The question is, did the father contract the debt for an immoral purpose? And the question is not : does not morality demand that the debt should be paid back? The mistake, if I may say so with respect, arises from a confusion of standpoints. There is hardly any debt, of which it can be said that it is not just that it should be repaid. Bat the Hindu law in dealing with the pious obligation of the son does not look at the question from this point of view.

18. In Triuntalayappa Mudaliar v. Veerabadra [1909] 19 M.L.J. 759, Garuda Sanyasayya v. Narella Murthenna [1918] 9 L.W. 1 and Venkatacharyulu v. Mohana Panda A.I.R. 1921 Mad. 407 the sons were held liable, for sums misappropriated by the father, as agent or trustee, on the ground that the debt, in its inception, was honest and that subsequent dishonesty did not render it illegal or immorial.

19. In Kanemar Venkappayya v. Krishna Chariya [1908] 31 Mad. 161, Gunmadhan Chetty v. Raghavalu Chetty [1908] 31 Mad. 472, Krishna Charan Mohanti v. Radha Kanto Roy [1912] 16 I.C.

410 and Niddha Lal v. The Collector of Bulandshahr [1916] 14 A.L.J. 610, the sons were held liable for sums misappropriated by the father, but the judgment proceeded on the ground that the father's act amounted not to a crime, but only to a breach of civil duty. It is impossible to understand this distinction, as, on the facts stated, the misapplication of funds was clearly criminal and rendered the father amenable to criminal law.

20. The argument that found favour in Triumalayappa Mudaliar v. Veerabadra [1909] 19 M.L.J. 759 does not seem to have impressed the learned Judges Mookerjee and Beachoroft, JJ., in Krishna Charan Mohanti v. Radha Kanto Roy [1912] 16 I.C. 410 referred to above; for they refer to the distinction between an initial wrongful taking and a taking not wrongful at its inception, as a refined distinction and the learned Judges also seem more disposed to adopt the ground stated in Natesayyan v. Ponnusami (1893) 16 Mad. 99. In my opinion, the distinction between a crime and a breach of a civil duty in this context is extremely artificial and finds no support in the texts of the Hindu Law.

21. Mahabir Parsad v. Basdeo Singh [1884] 6 All. 234, Pareman Dass v. Bhattu Mahton [1897] 24 Cal. 672 and McDowell & Co. v. Raghava Chetty [1904] 27 Mad. 71 fall under a different category. The sons were held liable for moneys received by the father on the ground that the moneys were taken and misappropriated under circumstances, which constitute the taking itself a criminal offence. The debt was in its origin clearly immoral and the sons were on that ground held liable.

22. I have BO far dealt with cases, where the debt arose out of a liability of the father to account for moneys. I shall pause here for a moment to see, if any intelligible principle can be deduced from the cases. It cannot be gainsaid that there is absolute want of harmony, so far as the decisions were made to rest upon particular grounds. But if the facts of the cases are examined, the conflict is only apparent and the true principle appears to be that the sons are not liable, where the moneys were originally obtained by the father by the commission of an offence; the son's liability is, on the other hand, recognised where, in its origin, the debt was not immoral, but there was a supervening dishonest act of the father.

23. In his very learned argument, Mr. Venkatasubramama Iyer contended that this was the true position. I entirely agree. But I am not prepared to accept the next step in his argument that the son is not liable, if there is an element of impropriety - however small - in the father's conduct in incurring the liability. If the father's conduct merely deserves blame or censure, the sons will not, according to this contention, be liable. This seems to me an extreme argument and in my opinion, is not warranted by the texts of the Hindu law, nor is the weight of modern authority in its favour. If it be borne in mind, that the debts condemned by the Smritis in this connection are debts such as those due for spirituous liquor, or for lust, or for gambling, it will be obvious that the ancient lawgivers did not intend the sons to enjoy immunity, merely because the father's conduct was not above reproach, judged by the highest standards of morality. So far as the decided cases are concerned, I must say, there is a want of uniformity; but in my opinion, those rulings, which have laid down a contrary rule cannot be accepted as good law.

24. In Chhakauri Mahtton v. Ganga Prasad (1912) 39 Cal. 862, the son was held liable, in respect of a decree passed for damages against the father for injury done to the crops of a third party, by the obstruction of a channel, through which he was entitled to irrigate his lands. In Chandrika Ram Tiwari v. Narain Prasad Rai A.I.R. 1924 All. 745, the son was likewise held liable to answer a decree for damages, obtained against the father, for cutting trees and demolishing a house. A different view was taken in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348, where a dam was erected by the father, which obstructed the passage of water and the son was held not liable to pay damages adjudged against the father.

25. This conflict is illustrated by several other cases. In Ratan Lal v. Birjbhukan Saran [1921] 61 I.C. 774, the son was held not liable to satisfy a decree, obtained against the father, for damages for retracting from a bid at an auction. In Mahabir Prasad v. Sri Narayan [1918] 3 Pat. L.J. 396, it was held that a son was not liable, for money due on a contract of indemnity, by the father, in respect of a property sold. In Rama Iyengar v. Secretary of State [1909] 20 M.L.J. 89 the Court-fee payable to the Government by a father who brought a suit in forma pauperis was hold to be an immoral debt. In Sunder Lal v. Raghunandan Prasad A.I.R. 1924 Pat. 465 the son was held not liable for damages, awarded against the father for malicious prosecution.

26. On the other hand, in Raghunandan Prasad v. Chem Ram [1915] 27 I.C. 895 it was held that it was the pious duty of a son to pay the money due under an indemnity clause in a sale-deed, executed by the father and in Hari Singh v. Sant Prosad Singh [1916] 32 I.C. 969, where one of two purchasers wrongly withdrew the whole of the purchase-money and was directed by decree of Court to repay the other purchaser's share, the son was held liable, on the ground that the act of the father was not immoral or criminal. In Sumer Singh v. Liladhar [1911] 33 All. 472, it was held that the money borrowed by the father to defend a suit for defamation is a debt, which a Hindu son is liable to pay; from the report, it does not appear whether the father was eventually found guilty of defamation or not. In Khalilul Rahman v. Gobind Pershad [1893] 20 Cal. 328, it was held that the exception under the Mitakshara could not be extended to transactions, however, "unconscientiously imprudent" or "unreasonable" they might be.

27. Indeed, it is unnecessary to multiply these references. In the application of the rule, there is a great divergence of opinion.

28. In some of these oases, the father's conduct has been held to be immoral, by too rigid a standard being applied.

29. I would state the rules thus:

(1) If the debt is in its inception not immoral, subsequent dishonesty of the father does not exempt the son.

(2) It is not every impropriety or every lapse from right conduct that stamps the debt as immoral. The son can claim immunity only, when the father's conduct is utterly repugnant to good morals, or is grossly unjust or flagrantly dishonest.

30. The rule as stated is necessarily elastic; but I am not aware that any test has in any case been so far laid down, which is not open to -this criticism. The question no doubt becomes one of degree; but the rule of pious obligation, in its very nature, is incapable of more precise definition. Applying the two rules I have just enunciated, the sons cannot claim immunity from liability for mesne profits, on the ground that they necessarily and always arise from an immoral transaction.

31. It is of the utmost importance to remember that it is foreign to any enquiry on this subject to consider, whether the son has really been benefited by the father's act. Untrammelled by the peculiar doctrine of the Hindu Law or by authority, one would be disposed to think that, if the son was benefited, it would be his duty to pay back the debt; if he is not, there would be no such duty cast on him. But this utterly ethical consideration cannot be a factor at all, in the determination of this question; for as Mookerjee, J., observes in Chhakauri Mahton v. Ganga Prasad (1912) 39 Cal. 862, the liability of the son depends upon the nature of the debt and the test of benefit is immaterial. By an act of theft, on the part of the father, the estate might have benefited, but the son is not liable. By a reckless conduct, short of immorality, the father might have rendered the family desolate, but the son is liable. Reference, therefore, to abstract principles of morality ignores this essential feature and is therefore, apt to mislead.

32. Next, I pass on to a text, on which great stress was laid, by the learned Counsel and which has not, he contends, received its due share of recognition from Courts. I have referred to the text of Brihaspati, where, in the enumeration of obnoxious debts, he mentions promises made under the influence of lust or wrath, "Kama Krodha Pratisrutham." These words are supposed to have been more clearly and with greater precision defined by a Smriti of Katyayana.

33. The two following verses are ascribed to him:

(1) The debt due upon a written bond, or on a promise to a woman, who was another's before (and not married by him) is called a debt for love.

2. Having done an injury to another, or destroyed his thing, through anger, if anything is promised in satisfaction, it is called a debt for anger.

34. (Translation of Ghose, See his "Hindu Law" p. 546).

35. Mr. Venkatasubramania Iyer's contention is that liability for mesne profits falls within the second verse above quoted.

36. The text of Katyayana has been referred to by various commentators of great authority. Apararka in his commentary on Yagnavalkya, after giving the text of Narada, which contains the words "Kama Krodha Kritam" and then citing the two verses of Katyayana proceeds thus:

This is the meaning : Whatever wealth is promised to another for his gratification, on account of injury caused to him due to loss of property, that debt is krodha krita, i.e., debt promised under the influence of anger.

37. Smriti Chandrika, in the chapter "Buna Dana Prakarani" gives the text of Brihaspati and interprets the expression 'Kama Krodha, Pratisruta' in the words of Katyayana, who is referred to by name. The subject is dealt with thus:

"Kama Pratisruta and Krodha Pratisruta are explained by Kityayana," (Hare the two verses are given) and the relevant verse is thus explained. "Where injury etc.;" means this if, having caused from wrath, injury or loss of property to another, for its gratification, wealth is promised, that debt is Krodhaja.

38. Saraswathi Vilasa's treatment is on lines very much similar to that of Smriti Chandrika and an extensive quotation is unnecessary.

39. Vivada Ratnakara cites the text of Katyayana, In the section, Runa Dana Taranda, the author quotes the text of Brihaspati and says: "Kama Krodha Prathisruta will be subsequently dealt with". Then he cites the text of Gautama and comments on it and next Vyasa or Usanas is likewise quoted and commented on and the commentator then gives the verses of Katyayana, without mentioning the authorship. He explains "Kama Krodha Krita" thus : If under the influence of wrath, another's property is destroyed, or injury is caused to him, and to give wealth for its gratification, if a debt is incurred, that debt is called Krodha Krita." The author concludes the discussion with these words:

These are just the Kama Krodha Prathisruta referred to above.

40. Viramitrodaya similarly quotes Brihaspati and to explain the import of the words "Kama Krodha Prathisruta" Katyayana is called in aid. Vivada Chintamani and Parasara Madhaviya also cite Katyayana and refer to him by name. Their treatment of the subject is more or less similar to that of Viramitrodaya and does not therefore require any further detailed notice.

41. Vivada Bhanjornava (Jagannadha's Digest) similarly refers to Katyayana and contains a long discussion upon his text. It is unnecessary to extract the passage, as it can be readily found in Colebrooke's translation. The learned translator has, however, failed to understand the second verse of Katyayana, the one with which we are concerned and this mistake has vitiated the whole rendering, in so far as it relates to debts, incurred under the influence of anger. According to Colebrooke, the debt condemned is that incurred for payment to cause injury, in order to gratify anger:

What is borrowed to give away, for the purpose of destroying another's property, or injuring another man, through resentment, is a debt, incurred under the influence of wrath.

42. Acoording to this translation, the gratification referred to is the gratification of the debtor's anger, or to put the matter simply, the debt contemplated is money promised to a ruffian, to gratify the debtor's resentment, by hurting another, or injuring his property. It is clear beyond doubt that Colebrooke is wrong, as not only the text of Katyayana is not susceptible of this interpretation, but the rendering is also opposed to that uniformly adopted by the large number of commentators who have expounded the text.

43. I shall now, in the light of this text of Katyayana, discuss the son's liability for mesne profits. Injury to another, or his property, from wrath, is what is contemplated. Is there any necessary connection between the awarding of mesne profits and distraction of another's property by wrath?

44. I would understand Katyayana's text to mean that the injury inflicted, or damage caused, should be the result of the wanton and flagrant violation of another's right from anger, engendered by malice or revenge for instance, an act of incendiarism. To such and similar cases only, the text of Katyayana is applicable. Why should it be assumed that Katyayana was laying down a very different rule from what the other Rishis did?

45. In my opinion, Katyayana gave, by way of illustration, an instance of grossly immoral debt and I am not prepared to hold that he intended to enlarge and add to the class of debts from the payment of which the son is exempt. My view, therefore, is that in regard to the question of liability for mesne profits, the text of Katyayana does not lead to a different result.

46. I have so far dealt with the question, on the footing that it is not concluded by authority. The learned Vakil for the respondents relied upon Nanomi Babuasin v. Modhun Mohun [1886] 13 Cal. 21 a decision of the Judicial Committee, as laying down that a son is under a pious obligation, to satisfy a decree for mesne profits, obtained against the father. But the appellant's Counsel contended that the case is no authority for this position, as it only decided that the debt in question was a joint family debt, which the son was bound to pay, the other question regarding the son's duty to pay it, as a father's debt not having been decided. I have very carefully gone through the judgment of the Privy Council the judgment of Cunningham, J., in the High Court and the arguments of Counsel, as reported both in the Indian Law Report Volume and in the Indian Appeals Volume and I entertain no doubt that the question really decided is the son's liability, under the pious obligation to pay his father's debt. It is pointed out that there is no reference, either to the original texts, or to the ancient writers, in the argument or in the judgment. But I cannot, on that ground alone, hold that the point was not decided.

47. I may state in the argument of Mr. Doyne as reported, there is a reference to the contention that the origin of the liability for mesne profits is a wrongful ouster : see Nanomi Babuasin v. Modhun Mohun [1886] 13 Cal. 21.

48. In Karan Singh v. Bhup Singh [1904] 27 All. 16, a Full Bench of the Allahabad High Court has understood the Privy Council decision in this sense, The Allahabad case just cited is also a direct authority which favours the respondents' contention.

49. The observations of Rampini and Mookerjee, JJ., in Peary Lal Sinha v. Chandi Charan Sinha [1907] 11 C.W.N. 163, though obiter, to the effect that a son is under a pious obligation to discharge a decree for mesne profit?, obtained against his father, are entitled to great weight and are quoted with approval in many modern treatises on Hindu Law : (see Sircar Sastri's Hindu Law, 1924 Edition, p. 347; Mayne, p. 405).

50. I shall now dispose of two minor contentions. First, it was suggested that the liability for mesne profits is in the nature of 'danda' or fine. I am not prepared to accept this contention.

51. In Prayag Sahu v. Kasi Sahu [1910] 11 C.L.J. 599, costs, incurred by a father, in an unsuccessful litigation, were held not to come within the term "danda"

52. In Natesayyan v. Ponnusami (1893) 16 Mad. 99, the sons were held, bound to pay the costs of the suit as awarded against their father.

53. Secondly, it was contended that the obligation to pay mesne profits is not in the nature of a debt, that it is not in fact, 'rind', which means strictly "what is taken under a promise to repay." I agree with Mookerjee, J., see Chhalcauri Mahton v. Ganga Prasad (1912) 39 Cal. 862 that the word "rina" as used in the texts has a much wider application than a mere debt or loan. I am prepared to go further than merely hold that at any rate, a judgment-debt comes within the expression "rina"; for, if this narrow construction be adopted, a son can be held liable, only after a decree is passed against the father; whereas, if he is originally impleaded in the suit for damages, he can resist it, on the ground that there has been no debt, as there has not been a judgment. This would be a clear anomaly. In Raman Pandithan v. Satha Cudumban [1916] 4 L.W. 366, when the sale by the father, of the son's interest was set aside, and the vendee brought a suit to recover the price of that share, it was held that what he was seeking to recover was a debt and in Garuda Sanyasayya v. Narella Murthenna [1918] 9 L.W. 1 the learned Judges observed that the subtle distinction between debt and accountability did not commend itself to them.

54. Now, let me turn to the facts, which led to a decree for mesne profits. One Subramania died in 1880, leaving two widows and a son by each, Kandasami and Balasubramania. 'After Subramania's death, there was a partition, the mothers representing their sons and after the latter became majors, they ratified the partition in 1902. Kandasami died in 1903. His widow brought a suit against Balasubramania, for possession of property, on the ground that they fell to Kandasami's share at the partition. The suit was resisted by Balasubramania, who pleaded that there was no completed partition. A decree was passed in favour of the widow of Kandasami, for possession of the property and mesne profits. The suit was filed on the 20th October, 1904, and the final decree of the High Court confirming the Subordinate Judge's judgment was made on the 25th July 1912. The mesne profits awarded were for the period between the date of the plaint and September 1912. After the properties were taken in execution and before mesne profits were recovered, Balasubramania died in 1922 and his sons now raise the question that they are not liable to answer the decree for mesne profits against their father. I am prepared to concede that the act of Balasubramania was not by any means honest, but at the I same time his conduct in being in unlawful possession of the properties is not so grossly unjust or immoral/ or so flagrantly dishonest, as to make the debt Avyavaharika within the meaning of the Hindu Law.

55. In the result, the Appeal fails and is dismissed with costs.

Madhavan Nair, J.

56. The appeal is directed against an order of the Subordinate Judge of Tinnevelly, confirming the attachment of the joint family properties in the-hands of the sons of one Balasubramania Pillar, in execution of a decree for mesne profits obtained against him. The respondent, a Hindu widow, instituted O.S. No. 39 of 1904, on the file of the Subordinate Judge of Tinnevelly against Balasubramania Pillai, the father, of the appellants and the half-brother of her deceased husband, for the recovery of some specified items of immovable property, for past and future mesne profits and for various other reliefs. Alleging that there was a family partition in which separate items of properties were allotted to her late husband and the defendant, she stated that after her husband's death the defendant interfered with her separate enjoyment of these and other properties and took possession of them. The defendant contended that there was no completed partition. Overruling this plea the Subordinate Judge gave the plaintiff a deoree for possession of the lands and other properties and also for past and future mesne profits. This decree was confirmed by the High Court, with some slight modifications. The decree-holder sought to execute the decree for mesne profits, for the year 1904 (the date of the plaint) to 1912, by attachment and sale of the judgment-debtor's family properties. He having died in the course of the execution proceedings, his sons, who are the present appellant?, were brought on record as his representatives. They contended that the decree-holder is not entitled to proceed against the family properties, which they have taken by survivorship on the grounds (1) that "the decree for mesne profits is in the nature of an immoral and illegal debt, contracted by their father, which they are cot bound to discharge, on the ground of pious obligation to pay their father's debts, under the Hindu Law; and (2) that their father spent the income of the properties in his possession on dancing girls and boon companions. The Subordinate Judge overruled both these contentions and passed the order, now appealed against, confirming the attachment of the family properties. The question arising for decision is whether joint family properties, in the hands of the sons can be attached and sold in execution of a decree for mesne profits, obtained against their father.

57. Under the Hindu Law, the liability of a son to pay the father's debts rests upon the well-known pious obligation on the part of the son to relieve his father from punishment in a future state, for non-discharge of the debts. The general rule is that the son should discharge his father's debts, unless the debts fall within the well recognised exceptions. In a learned judgment, in Chhakauri Mahton v. Ganga Prasad (1912) 39 Cal. 862 Mookerjee, J., after examination of the various texts, bearing on the question, has thus summarised exceptions:

If the provisions of all these texts are summarised the results appear to be that the debts, which a son is not under any obligation to pay, may be grouped as follows : (1) debts due for spirituous liquors (2) debts due for lust; (3) debts due for gambling; (4) unpaid fines; (5) unpaid tolls; (6) useless gifts or promises without consideration or made under the influence of lust or wrath; (7) suretyship debts; (8) commercial debts; and (9) debts that are not vyavaharika, i.e., debts that are not lawful, usual, or customary, or if we accept the version of Colebrooke, debts for a cause repugnant to good morals.

58. Bearing these exceptions in mind the learned Counsel for the appellants has argued before us; (1) that the decree for mesne profits in this case is in the nature of an Avyavaharika debt; (2) that it is a debt which has originated under the influence of wrath; and (3) that a decree for mesne profits

is not in the nature of a "debt" at all.

59. The first question to be considered is whether the decretal debt in this case is Avyavdhanha. The term vyavaharika appears in the text of Usanas cited in the Mitakshara (Commentary on Yegnavalkya Bk. II, verse 47) which runs as follows:

A fine, or the balance of a fine, likewise a bribe or a toll, or the balance of it are not to be paid by the son, neither shall he discharge a debt, which is not lawful.

60. There has been a considerable divergence of opinion, amongst the Judges, as regards the precise significance of this term and this has given rise to conflicting decisions. In the opinion of Mukerjee, J. the term Vyavaharika is equivalent to "lawful, usual, or customary". Sadasiva Aiyar, J., is inclined to adopt Colebrook's paraphrase of "Avyavaharika debt," namely, "debt incurred for a cause repugnant to good morals", as more nearly approaching the true import of the expression than any of the meanings given by the other authorities. He himself would paraphrase "Avyavaharika debt" as a debt which is not supportable as valid by legal arguments and on which no right can be established in the creditor's favour, in a Court of Justice : See Venugopala Naidu v. Rammadhan Chetty (1914) 37 Mad. 458. The term Avyavaharika is understood by Knight and Chandavarkar, JJ., in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348 as "unusual or not sanctioned by law or custom." According to these learned Judges, put into simple English, the text amounts to this that the son is not to be held liable for debts, which the father ought not, as a decent and respectable man, to have incurred.

61. The learned Counsel for the appellants argues that according to the decided cases the real test to discover whether a debt is an immoral debt in the sense, in which that term is understood in Hindu Law, is to find out the nature of the debt, at its inception and, if it is found that it has come into existence, under circumstances involving culpability or impropriety on the father's part and that it is therefore a debt, which a decent and respectable man would not incur, then he urges that it is an immoral, or illegal debt and the son is not at all liable to discharge it. He has sought to elucidate this principle, by an examination of reported decisions, in which the son was held liable and also of those in which the son was held not liable, the most important of which are the following : Natesayyan v. Ponnusami (1893) 16 Mad. 99, McDowell & Co. v. Raghava Chetty [1904] 27 Mad. 71, Kanemar Venkappayya v. Krishna Chariya [1908] 31 Mad. 161, Gurunathan Chetty v. Raghavalu Chetty [1908] 31 Mad. 472, Venkatacharyulu v. Mohana Panda A.I.R. 1921 Mad. 407, Mahabir Prasad v. Basdeo Singh [1884] 6 All. 234, Pareman Das v. Bhattu Mahton [1897] 24 Cal. 672, Chhaukauri Mahton v. Ganga Prasad (1912) 39 Cal. 862, Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348, Hanmant Kashinath v. Ganesh Annaji (1919) 43 Bom. 612, Krishna Charan Mohanti v. Radha Kanto Roy [1912] 16 I.C. 410, Nidha Lal v. Collector of Bulandshahr [1916] 14 A.L.J. 610, Chandrika Ram Tiwari v. Narain Prasad Rai A.I.R. 1924 All. 745, Gadadhar Ramanuj Das v. Ghana Syam Das (1918) 3 P.L.J. 533 and Gursarn Das v. Mohan Lal A.I.R. 1923 Lah. 399.

62. In Natesayyan v. Ponnusami (1893) 16 Mad. 99, it was held that, when a decree was passed against a Hindu father for money dishonestly retained by him, from the plaintiff's family, to which he was accountable, in respect of it, the debt was not of an illegal or immoral nature, so as to exclude

the pious obligation of the son to discharge it. In discussing the question whether the debt was tainted with immorality and illegality, the learned Judges, after stating the general rule, observe that:

Upon any intelligible principles of morality, a debt due by the father, by reason of his having detained for himself money, which he was bound to pay to another, would be a debt of the most sacred obligation for the non-discharge of which, punishment in the future state might be expected to be inflicted, if in any, and then state that the son is not bound to do anything, to relieve his father from the consequences of his own vicious indulgences, but he is surely bound to do that, which his father himself would do, were it possible, viz.," to restore to those lawfully entitled, money he bas unlawfully retained.

63. This case has been distinguished and explained in McDowell & Co. v. Raghava Chetty [1904] 27 Mad. 71. In that case, the father had taken money and misappropriated it, under circumstances, "which constituted the taking itself a criminal offence." Following the decisions in Mahabir Prasad v. Basdeo Singh [1884] 6 All. 234, and Pareman Das v. Bhattu Mahton [1897] 24 Cal. 672, it was held that in such circumstances the sons cannot be held liable, under the rule of Hindu Law, to pay the debts so incurred by the father. In Mahabir Prasad v. Basdeo Singh [1884] 6 All. 234, the decree debt against the father, for which the son was sought to be made liable, was for money which he had embezzled and for which he was convicted and the son was held not liable to pay such debt, as the debt was an immoral debt. In Pareman Das v. Bhattu Mahton [1897] 24 Cal. 672, a decree against the father for damages for crops stolen by him was held to be not binding on the sons. The decision in Natesayyan v. Ponnusami (1893) 16 Mad. 99 was distinguished by the learned Judges in McDowel & Co. v. Raghava Chetty [1904] 27 Mad. 71, on the ground that the withholding of the money in Natesayyan v. Ponnusami (1893) 16 Mad. 99, amounted to nothing more than a breach of civil duty." In Gurunatham Chetty v. Raghavalu Chetty [1908] 31 Mad. 472, the joint family property in the hands of the son was held liable, for the repayment of moneys misappropriated by the father, which were received by him, for the purpose of being paid to others, in the course of a kuri transaction, on the ground that the debt was not an immoral debt. In arriving at that conclusion, the learned Judges thus pointed out the distinction between the decisions in Natesayyan v. Ponnusami (1893) 16 Mad. 99, and McDowell & Co. v. Raghava Chetty [1904] 27 Mad. 71.

In McDowell Co. v. Raghava Chetty [1904] 27 Mad. 71, the Court expressly based its decision on the ground that the money was taken by the father and misappropriated under circumstances, which constituted the taking itself a criminal offence : whereas it was pointed out that the father's acts in Natesayyan v. Ponnusami (1893) 16 Mad. 99, though characterised by the learned Judges as dishonest, amounted to nothing more than a breach of civil duty.

64. It was then mentioned that in the case before them, it was not shown that the father's act amounted to more than a breach of civil duty. The same distinction between a breach of civil duty and, a criminal act was emphasised also in Gurunatham Chetty v. Raghavalu Chetty [1908] 31 Mad. 472, Krishna Charan Mohanti v. Radha Kanta Roy [1912] 16 I.C. 410, Niddha Lal v. The Collector of Bulandshahr [1916] 14 A.L.J. 610, Gadadhar Ramanuj Das v. Ghana Shyam Das (1918) 3 P.L.J. 533, Gursarn Das v. Mohan Lal A.I.R. 1923 Lah. 399, Hanmant Kashinath v. Ganesh Annaji (1919) 43

Bom. 612 decisions where the sons were held liable for sums misappropriated by the father.

65. In Tirumalayappa Moodelliar v. Veerabadra [1909] 19 M.L.J. 759, Garuda Sanyasayya v. Narella Murthenna [1918] 9 L.W. 1, Venkatacharyulu v. Mohana Panda A.I.R. 1921 Mad. 407, it was bold that if a debt was incurred by the father, as an agent or trustee, his son is liable to pay the debt and the liability of the son is not in any way affected by the fact that the father subsequently misappropriated the same, or even made himself criminally liable for it.

66. This distinction between a breach of civil duty and a criminal act is availed of, by the appellant's learned Counsel, for drawing the general inference, that, if the debt bas come into existence, under circumstances, sufficient to condemn the conduct of the father, though they may not be strong enough to procure his conviction in a Criminal Court, then the son can claim absolute immunity from the payment of such debt. No such general inference is warranted from the decisions that I have examined. While discussing the above cases, in Chhakauri Mahton v. Ganga Prasad (1912) 39 Cal. 862, Mookerjee, J., no doubt, points out that distinction between breach of a civil duty and a criminal act is "real though refined," but as observed in Srinivasa Aiyangar v. Kuppuswami Aiyangar A.I.R. 1921 Mad. 447.

the distinction between a civil and criminal breach of duty is very thin and it would not be easy, in all cases to say, whether the breach of trust is of such a character, as would not subject a father to a prosecution. Assuming that a son is bound to pay the undischarged debts of the father, for relieving him from the pangs of hell, it is difficult to see, why he should be relieved from paying the debts of his father, incurred by the commission of a criminal act.

67. However, it is not necessary, for the purposes of this case, to decide the question, whether the distinction adverted to is a real one or not, as the debt in this case admittedly has not been incurred by doing a criminal act. In my opinion, these decisions do not enable us, to deduce the general principle, contended for, on behalf of the appellants but they no doubt show ' by way of inference - and to this extent they support the appellant's argument - that an examination of the nature of the debt, at its inception, is a necessary condition, for finding out whether a particular debt is an immoral debt; viewed in this light, they also serve to illustrate how this necessary condition is to be applied in different and varying circumstances.

68. The argument that the son should be exempted from discharging debts, which the father ought not, as a decent and respectable man, to have incurred derives strong support from the decision in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348. In that case, the plaintiff obtained a decree against the defendant's father, for damages caused by a dam erected by the latter, which obstructed the passage of water to the plaintiff's lands. On the death of the defendant's father, the decree was sought to be executed against the son, the defendant, with respect to the ancestral estate, in his bands. It was held that the son was not liable. The correctness of that decision has been doubted in Bombay - see Ramakrishna Trimback v. Narayan (1916) 40 Bom. 126 and Hanmant Kashinath v. Ganesh Annaji (1919) 43 Bom. 612, and it has not been accepted, as good law, in other High Courts also : see Sumer Singh v. Liladhar [1911] 33 All. 472, Venugopala Naidu v. Ramanadhan Chetty (1914) 37 Mad. 458 and Garuda Sanyasayya v. Nerella Murthenna [1918] 9 L.W. 1. In Chhakauri

Mahton v. Ganga Prasad (1912) 39 Cal. 862, it was held that a decree for damages, obtained against a Hindu father, on account of injury done to the plaintiff's crops, by the obstruction of a channel, through which he was entitled to irrigate his lands, could be executed against the joint family properties in the hands of the sons. In Chandrika Ram Tiwari v. Narain Prasad Rai A.I.R. 1924 All. 745 the son was held liable to pay damages, obtained against a Hindu father, for wrongfully cutting down trees, that did not belong to him, and for demolishing a house. If the test laid down in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348, is the correct one, then it seems to me that these decisions, as well as those cases of misappropriations of money, by the father, which we have examined above, barring those where the taking itself constituted a criminal offence, must be held to be wrong. The principle, laid down in Durbar Khachar v. Khachar Harsur (1908) 32 Bom. 348, seems to have been accepted by Wallis, C.J., in his judgment in Venkatacharyulu v. Mohanapanda A.I.R. 1921 Mad. 407. In that case one of the questions for consideration was whether, when the father's alienation of joint family property has been set aside, the sons are bound to refund the moneys paid to the father in consideration of the alienation, on the ground that the sons incurred a pious obligation to discharge the liability. Wallis, C.J., observed that "Any liability which the father may incur to the alienees, on such unconditional setting aside of the alienation, arises from his immoral act, in making the alienation, in the first instance, in breach of the duly, which he owed to his sons as the manager of the joint family property.

69. With very great respect, I am not prepared to accept this view of the son's liability. If the question is to be looked at, from the standpoint of the father's duty towards the sons, then the sons will be able to claim exemption from liability, in almost all the cases that may be brought against them. Seshagiri Aiyar, J., the other learned Judge, who heard the case, though he discusses the question of the pious obligation of the son, to pay the father's debts in the course of his judgment does not record any opinion on this question, but bases his judgment on quite a different ground.

70. I do not think it is necessary to discuss in detail the various other cases quoted before us, as they do not in any way support the general principles contended for by the appellants' learned Counsel but only serve to illustrate the conflict of opinion, prevailing in the various High Courts, as regards the application of the rule, regarding the son's liability to pay the father's debts. To take a few instances : In Gadadhar Ramanuj Das v. Ghana Shy am Das [1918] 3 Pat. L.J. 396, a son was held not liable for money, due on a contract of indemnity made by the father. In Rumiengar v. Secretary of State [1909] 20 M.L.J. 89, it was held that the son was not liable to pay the Government costs, incurred by a father, who brought a suit in forma pauperis, on the ground that the debt was an immoral debt. It was held in Raghunanda Prasad v. Chem Ram [1915] 27 I.C. 895, that the son was bound to pay the money due under an indemnity clause, provided in a sale deed, executed by the father, on the ground that the debt was not an illegal and immoral one. In Khalilul Rahman v. Gubind Pershad [1893] 20 Cal. 328 the son was held liable to pay a debt, contracted by the father, for what was described as a Highly needless and imprudent purpose of establishing an adoption by litigation, which ruined a prosperous family : see Ratan Lal v. Brijbhukon Saran [1921] 61 I.C. 774 and Hari Singh v. Sant Prasad Singh [1916] 32 I.C. 969.

71. This conflict is probably due to a confusion of the various standpoints, from which the nature of a particular debt may be regarded, viz., the standpoint of the creditor, the standpoint of the son

(virtually the debtor) and the detached standpoint of an outsider. In view of the various decisions we have examined, it is obvious that an attempt to lay down a general test or a fresh interpretation of the rule, which would apply to all cases must be absolutely futile. The following conclusions emerge from the decided cases : (1) A debt, which is not immoral, at its inception, is binding on the son, though subsequently it may be tainted by dishonesty and immorality : (2) improper, imprudent, unreasonable, or dishonest debts are not necessarily immoral : (3) their liability arising by the commission of offences, by the father has been always held to be immoral; and (4) the test of benefit to the estate is not a material question for consideration, as "the liability of the son depends upon the(nature of the act" : see Chhaukauri Mahton v. Ganga Prasad (1912) 39 Cal. 862. In my view, the interpretation, sought to be put upon the expression "an avyavaharika debt" by the learned Counsel for the appellants, is not supported by the texts of Hindu Law, or by the abovementioned decided cases, to which he has drawn our attention.

72. The facts of the case and the findings of the Judges were also referred to by the learned Counsel, apparently for the purpose of showing that there was a wanton invasion of property, by the father of the appellants, which would bring his conduct, within the "rule of culpability or impropriety," which he wished to enunciate and with which I have already dealt. I am prepared to assume that the conduct of the father has been dishonest. Except the odium and impropriety, attaching to the unlawful taking and retention of another person's property, which exist in all cases of this description, no circumstances calling for special condemnation are disclosed in the records. The facts of the case and the findings of the Judges do not, in my opinion, lend any special support to the legal arguments, advanced on behalf of the appellants.

73. The next argument of the appellants' learned Counsel is that a decree for mesne profits must be considered to be in the nature of a "debt due to anger." This is based on the text of Brihaspati, as explained by Katyayana and in this connection, the learned Counsel has referred to Apararka's interpretation of Katyayana's text and also to Smriti Chandrika (Mysore Sanskrit Series p. 396), Saraswati Vilasa (Mss. in Adyar Library), Vivada Batnakara (Bibllotheca Indica p. 58), Viramitrodaya (Jibananda Vidyasagar's Edn. p. 343), Vivada Chintamani p. 17, and Parasara Madhaviya (Bibliotheca Indica p. 198) to show how the expression "debt incurred in anger" (Kama Krodha Pratisrutam) occurring in the text of Brihaspati has been explained by Katyayana;

74. The text of Brihaspati runs as follows:

The sons are not compellable to pay sums due by their father, for spirituous liquors, for losses at play, for promises made without consideration, or under the influence of lust or of wrath, or sums for which he was a surety : or a fine, or a toll, or the balance of either.

(Colebrooke's translation.)

75. The following is the text of Katyayana:

The debt due upon a written bond or on a promise to a woman who was another's wife before and not married by him is called a debt for love.

Having done an injury to another, or destroyed his things, through anger, if anything is promised in satisfaction, it is called a debt for anger.

Ghose's Translation.)

76. The argument of the learned Counsel is that the above text of Katyayana has been wrongly understood by Colebrooke in his Digest and misled by his comment, lawyers and judges have not correctly appreciated the significance of the expression "debt incurred under the influence of wrath," occurring in Brihaspati and that, if that expression is properly understood, as explained in Katyayana's text, then a decree for mesne profits comes, within the scope of that explanation and is therefore a debt, which falls within the category of debts, which, the sons are not bound to pay. Colebrooke's translation runs as follows:

What a man has promised, with or without a writing, to give to a woman, who had another husband before, let the Judge consider, as a debt under the influence of lust.

(2) But what has boon promised to gratify resentment, by hurting another, or by destroying his property, let the Judge consider as a debt incurred under the influence of wrath.

77. The second verse is thus explained in Colebrooke's Digest:

What is borrowed to give away, for the purpose of destroying another's property, or injuring another man, through resentment, is a debt incurred under the influence of wrath.

78. According to this translation, the debt which the son is not liable to pay, is the money, which has been promised to one employed (a ruffian for instance), to gratify the promisor's resentment, by hurting another, or by destroying property. The interpretation by Colebrooke, of Katyayana's text appears to be wrong, as the Sanskrit text does not support it and as it is also opposed to the interpretation, put upon the text, by the various commentators. However, the debt, for which the decree for mesne profits was passed in this case, not being shown, in any sense, to have been incurred in anger, the argument must be rejected. In this connection, it may be observed that a similar argument, advanced in support of the objections to the attachment of the joint family property, in execution of a money decree obtained against a Hindu father, for his failure to account, as a trustee, was overruled by the learned Judges in Hanmant Kashinath v. Ganesh Annaji (1919) 43 Bom. 612.

79. It has been next argued that the liability of a son to pay a debt, incurred by his father, should be restricted to cases, in which the debt is a contractual obligation and that a decree for mesne profits cannot be considered to be a debt in this sense. The argument receives some support from the observations of Trevelyan and Beverley, JJ., in Pareman Dass v. Bhattu Mahton [1897] 24 Cal. 672. As already pointed out, that was a case, where a decree was passed against the father, for damages for crops stolen by him. In overruling the argument that there was an antecedent debt, the learned judges state:

The cases cited refer to transactions, which had been entered into, by way of a contract, or something approaching a contact between the father and some other person, and the debt which was so contracted, it became the pious duty of the BOD to pay off. But here, there was no debt antecedent to the decree. There was merely a right to damages, for a wrongful and criminal act; and so those cases would have no application to the present case.

80. The argument is based upon the meaning of the term "Rina," as used in the texts. No doubt, the term "Rina" strictly understood, means "What is taken under a promise to repay:" (see Sabda Kalpadruma Vol. I), namely a debt or a loan. But in view of the judicial decisions, it is impossible lo give the term this restricted significance. As observed by Mukerji, J., in Chhakauri Mahton v. Ganga Prasad (1912) 39 Cal. 862.

There is no substantial difference in principle between a case in which a person is under an obligation to repay money which he has actually borrowed and a case in which he is bound to discharge an obligation created by a judgment of Court. It is worthy of note that the dictum in Foreman Doss v. Bhattu Mahton [1897] 24 Cal. 672, is of a, very qualified character and fully recognises that a right to damages might be deemed to create a debt even before the suit is brought for its enforcement. In any event after a decree has been made in favour of the successful plaintiff he is entitled to realise from his defeated opponent a sum of money precisely in the same manner as if he had actually advanced to the latter a sum of money by way of loan.

81. In Raman Pandithan v. Satha Cudumban [1916] 4 L.W. 366, when a sale by the father of property, including the sons' share was sot aside as regards the son's share and a purchaser consequently brought a suit for recovering a portion of the consideration paid for the sale, it was held that "there was a debt due from the father, when the properties were sold" and that the plaintiff was suing "to recover a portion of the debt." In Garuda Sanyasayya v. Narella Murthenna [1918] 9 L.W. 1, which held that the son is accountable for the misappropriation of trust funds by his father and grandfather, the subtle distinction drawn between "accountability" and "debt," for the purpose of exempting the son from liability, was not accepted by the Court. For the above reasons, the argument that a decree for mesne profits is not in the nature of a "debt" as understood in Hindu Law, must also be rejected.

82. Lastly it was suggested that the decree for mesne profits is in the nature of "Danda" or fine, but no authority has been cited in support of this argument. In Prayag Sahu v. Kasi Sahu [1910] 11 C.L.J. 599 it was held that costs awarded against a Mitakshara father, who was unsuccessful in a litigation, do not come within the term "Danda" or fine in the text of Yagnavalkya.

83. Thus far, the arguments have proceeded on the assumption that the question for decision in this case is not concluded by authority : but, as argued by the learned vakil for the respondent, it seems to me that the point is really concluded by the decision of the Privy Council in Nanomi Babuasin v. Modhun Mohan [1886] 13 Cal. 21, which is a direct authority on the point, and that decision is really against the appellants' contention. In that case in an ejectment suit, brought against the father, the plaintiff obtained a decree for mesne profits and joint family property was sold, in execution of that decree. Two questions arose for decision before the Privy Council, namely, (1) whether the sale in

execution proceedings conveyed to the purchaser the entire joint family property, or only the father's co-parcenary interest in it : and (2) whether, if the entire joint family property was conveyed, the sons could object to such a sale. After having held on the first question, that "the purchaser had succeeded in showing that he bought the entirety of the estate, which could be lawfully sold to him," their Lordships proceed to deal with the second question in this way:

That brings their Lordships to consider the nature of the debt in this case. There was a great deal of discussion, whether the debt originated in the loan of Rs. 45,000, or in Girdhari's receipt of the mesne profits, for which the decree was given. It appears to their Lordships that the new debt for which the decree was made, is the foundation of the sale. But, whichever it was, we think the High Court is clearly right in holding that it must be taken as a joint family debt. The Subordinate Judge does not give any opinion on this point. If it is a joint family debt, the sale to answer it, effected either by Girdhari or in a suit against him, cannot be successfully impeached.

84. In what sense did their Lordships of the Privy Council use the expression "joint family debt," in the paragraph just now extracted? It has been argued by the learned Counsel for the appellants that the debt was held to be a joint family debt, because in the suit in which the decree was passed, the family was represented by the father as karta, that he defended the suit in this capacity as manager of the family, and that the question whether the decree for mesne profits was in the nature of an immoral debt was not considered in that case. It is clear to our minds that the question must have been considered by their Lordships of the Privy Council and that in using the expression" joint family debt "their Lordships must be considered to have meant, that the debt for which the joint family property was sold, not being a debt of an immoral nature, wag binding on the family, and thus became a joint family debt.

85. The arguments of the learned Counsel, who appeared before the Privy Council, and the statement of the principle to be applied to the decision of the case, appearing in their Lordships judgment, conclusively show that their Lordships were called upon to decide, and did decide, the question whether a decree for mesne profits was a debt, tainted with immorality and therefore, not binding on the sons. It will be observed that the High Court held that the sons could not impeach the sale and this judgment was confirmed by the Privy Council. According 'to the summary of arguments, as given in the authorised reports. Messrs. Woodroffe and Arathoon, counsel for the respondents, argued:

The first and main point is that the whole estate is liable, because the debt, contracted for no immoral purpose is due by the father of the family living under the Mithila Law, on this point identical with the Mitakshara. This supports the sale of the family estate, in satisfaction of the decree, upon the father's debt. It may, however, be taken, as a second ground, that the father here was the manager of the family estate and represented the sons interests; the family also profited by the money and had the temporary benefit of the rents and profits after the ouster.

86. The arguments of Mr. Doyne, counsel for the appellants, also shows that the question whether the decree debt was in the nature of an immoral debt was put before the Privy Council. Their Lordships in their judgment state the principle thus:

Destructive as it may be of the principle of the independent co-parcenary rights in the sons, the decisions have for some time established the principle that the sons cannot set up their rights against their father's alienation for an antecedent debt, or against his creditors' remedies for their debts, if not tainted with immorality. On this important question of the liability of the joint estate, their Lordships think that there is now no conflict of authority.

87. Continuing, their Lordships state in the next paragraph:

The circumstances of the present case do not call for any enquiry as to the exact extent to which the sons are precluded by a decree and execution proceedings against their father, from calling into question the validity of the sale on the ground that the debt which formed the foundation of it, was incurred for immoral purposes, or was merely illusory and fictitious. Their Lordships do not think that the authority of Deendyal's case bound the Court to hold that nothing but Girdhari's co-parcenary interest passed by the sale. If his debt was of a nature to support a sale of the entirety, he might legally have sold it without suit, or the creditor might legally procure a sale of it by suit. All the sons can claim is that, not being parties to the sale or execution proceedings, they ought not to be barred from trying the fact, or the nature of the debt in a suit of their own. Assuming they have such a right it will avail them nothing, unless they can prove that the debt was not such as to justify the sale.

88. After thus laying down the principle, that a son cannot question his father's alienation unless the debt was tainted with immorality, their Lordships decided that the entire family property was conveyed by the sale and then proceeded to consider the nature of the debt, whether it was tainted with immorality. In these circumstances, it appears to me that when their Lordships used the term "joint family debt" they meant to say that the decree debt for mesne profits, not being a debt of an immoral nature, was binding on the joint family.

89. The Privy Council judgment has been understood, in the manner indicated above, by the learned Judges of the Allahabad High Court, in Karam Singh v. Bhup Singh [1904] 27 All. 16. That was also a case, where the joint ancestral property of a Hindu family was attached in execution of a decree for mesne profits obtained against the father of the family. Following the Privy Council decision in Nanami Babuasin v. Modhun Mohun [1886] 13 Cal. 21, it was held by the Full Bench that the decree in question was not in the nature of a debt, tainted with immorality and that the sons were responsible for such a debt. The Privy Council judgment has also been understood in the same way in Shambu Bhan Singh v. Chandra Sekhar Bakhsh Singh A.I.R. 1925 Oudh 230.

90. In Yanamandra Papiah v. Lanka Subbasastrulu (1914) 27 M.L.J. 176 and Ram Deo Prashad Singh v. Mt. Gopi Koeri (1912) 16 C.W.N. 383 both of which were concerned with the execution of a decree for mesne profits against the joint family property in the hands of the sons, it was assumed without any discussion that such debts were not debts of an immoral nature, which exempted the sons from liability to discharge them.

91. In Peari Lal Singh v. Chandi Charan Singh [1907] 5 C.L.J. 80 Mookerjee, J., has expressly stated that the debt, for the recovery of which a decree for mesne profits has been obtained, was not tainted

with immorality and illegality. In that case, the question did not arise directly for decision, as the creditor only sought to sell what he had attached, during the life-time of the judgment-debtor, and the interest of the Judgment-debtor, which had been seized in execution and had been ordered to be sold was alone sought to be affected in those proceedings, But the learned Judge says:

"If the question thus arises, he would, without hesitation answer it against the appellants, and states the reasons thus:

The original judgment-debtor became liable to pay a large sum of money, because he had kept the respondent out of possession of property, which lawfully belonged to the latter and to the profits of which he was entitled. By unlawful receipt of these profits, the judgment-debtor enriched his own estate, which has now by survivorship passed into the hands of the appellants. We cannot discover any intelligible principle upon which a debt of this character may be described as immoral and illegal.

92. The benefit to the judgment-debtor's estate, assigned as a reason, was subsequently held by the learned Judge to be " possibly open to the criticism, that if the liability of the son depends upon the nature of the estate, the test of benefit to the estate becomes immaterial," but this does not affect the correctness of the decision for, as the learned Judge himself points out, the decision was substantially based upon the intelligible principle of morality, underlying the pious obligation of the sons to discharge the just debts of their father - the ground mentioned in Natesayyan v. Ponnusami (1893) 16 Mad. 99 : see Chhaukauri Mahton v. Ganga Prasad (1912) 39 Cal. 862. This decision is quoted with approval in recognised text books on Hindu Law; (see Sarkar Sastry's Hindu Law p. 347, Edn. 1924; Mayue's Hindu Law p. 405; and Trevelyan p. 302) and I am prepared to follow it.

93. In the result, after carefully considering the able and exhaustive arguments advanced before us, I have come to the conclusion that the appellants in this case are bound to discharge a decree for mesne profits, passed against their father and that the joint family properties in their hands may be attached and sold in execution of that decree. The lower Court's order is right and this appeal must be dismissed with costs.