(1) பக்கங்களின் எண்ணிக்கை _____

(2) புதுக்கித் திருப்பிய நாள் _____

(3) ஆதாரங் குறிப்பவர் சுருக்கொப்பம் _____

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

LEGISLATIVE துறை

அரசாணை எண்.	14-16	அச்சகம்
மு. கோப்புத் தாள் எண்.		பலவகை
நாள் :	16-2-1897	199 .

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மடிக்கவோ மூண்டபடி கையாளவோ கூடாது.

ஆவண. கா. 1—18,006—6-9-90.

Please see query within Proof 24/2

Government {1897} of Madras
LEGISLATIVE.

Recd. } 1897. *Enclosures*

Regd. } *Spare copies*

G.O., No. 14, 16th February 1897.

FEBRUARY.

Hindu Gains of Learning Bill.

Passing orders on the subject of the introduction of the — into the Madras Legislative Council, and directing that the Government of India be addressed on the subject, and that a copy of the proceedings be forwarded to Her Majesty's Secretary of State for India.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—again the following papers :—

Despatch from the Right Honourable the Secretary of State for India, dated 25th June 1891, No. 2, Legislative.

Abstract.—Pointing out the desirability of ascertaining the views of the Hindu community at large on the provisions of the Hindu Gains of Learning Bill, and inquiring whether this Government had satisfied itself whether the sanction of His Excellency the Governor-General under section 43 (5) of XXIV and XXV Victoria, cap. 67, is not required for its introduction into the Madras Legislative Council

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G.O., No. 47, Legislative, dated 31st August 1892.

Abstract.—Forwarding copies of the Hindu Gains of Learning Bill to certain Hindu gentlemen for favour of opinion.

G.O., No. 13, Legislative, dated 22nd February 1893.

Read—the following papers :—

From M.R.Ry. A. SANKARIAH, B.A., President-Founder, Hindu Sabha, to the Chief Secretary to Government, dated Trichoor, 3rd March 1891.

I have the honour to submit the following observations on the Bill introduced by the Hon'ble V. Bhashyam Iyengar Avargal.

There is no doubt about the non-liability of acquisitions to partition against the acquirer's wish. But he is guided by moral, filial and fraternal affections, especially if the family has spent much and even contracted debts to enable him to succeed well in life. And often the son or brother so assisted improves the family house or adds to the family lands or discharges the family debts. It would be improper and impracticable for him to claim these back at any time.

I humbly think that the presumption should be in favour of the joint family system in respect of acquisitions which the gainer has not chosen to keep distinct under his own control.

The Hindu law of the partibility of the gains of learning applied mainly to *hereditary* professions endowed and patronised by society as the office of village priest or musician or dancing girl. In such cases the joint family should be upheld till division is effected or notice is given to co-parceners.

From M.R.Ry. T. SURYAPRAGASA RAO, B.A., Secretary, Literary Association, Cocanada, to the Assistant Secretary to Government, Legislative Department, dated Cocanada, 26th April 1891.

I have the honour to state that the provisions of the "Hindu Gains of Learning Bill" have been carefully considered by the members of the Literary Association, Cocanada, and that I am desired to submit the following observations with reference to the same for the consideration of His Excellency the President and the Honourable Members of the Council.

2. As pointed out by the Honourable Mover of the Bill, there is no doubt that the uncertainty of the present state of the law as regards the acquisitions made by a Hindu by means of learning has been productive of numerous evils disturbing the

harmony of Hindu families and "has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so or to conceal acquisitions made by him or to invest them *benami*." Instances are not wanting where the *benamidars* take advantage of the situation and set up their own titles to properties acquired in their names. This uncertainty gives rise also to speculative and ruinous litigation.

3. The Bill under consideration, while introducing no innovation, simply does away with the distinction peculiar to Hindu Law between the gains acquired by special or scientific education and those made by general or elementary education and aims at recognizing the rule obtaining in several civilized countries that the gains acquired by means of learning without reference to its nature or character from the separate property of the acquirer.

4. It is urged, however, in certain quarters that it is rather anomalous to place the gains of learning on a different footing from the gains made by any trade or other calling, seeing that in either case it is family fund that is made use of, and that the proposed legislation is likely to have a prejudicial effect upon the future education of junior members of Hindu families.

5. The association fails to see the force of these objections. In the first place, there are no points of similarity between the case of a member of a joint family receiving education at family expense and that of a member using family funds for other purposes. A member engaged in a trade for the benefit of the family pledges the family credit, rendering his co-parceners liable for losses incidental to the said business, and it is therefore but fair that the moneys earned out of such business should not be treated as the separate property of any single co-parcener who in such trade acts as the manager of the family. No such considerations apply to the case of a member earning by means of his learning, and the outlay on his education is generally looked upon as any other item of family expenditure for which one member of a family cannot call upon the other members for an account under the rules of the joint family system and in respect of which any return is seldom expected by the other members.

6. As the present law gives an unrestricted right to every member to separate himself from the joint family at any moment he chooses and make his acquisitions his exclusive property from that time forward, it is difficult to believe that the junior members are now being educated at the cost of the family funds with a motive on the part of the other members to lay claim to the future acquisitions of the members so educated. If the present law, as it is, has not stood in the way of education of such members, there is no reason to apprehend that the proposed modification of the law will produce any such effect.

7. A manager of a Hindu family provides for the education of the other members in proportion to his means out of a sense of duty, and the performance of this sacred duty will by no means be affected by the proposed measure. When we are aware that under the existing state of things, educated Hindus, as a rule, deem it a moral and religious duty to support and provide for the other members of the family who are less fortunate than themselves, even after their separation, there is no reason to fear that, if the present Bill should become law, they would all at once disregard such obligations and think of appropriating their earnings solely for themselves.

8. The association has therefore no hesitation in giving its cordial support to this measure in which the Hindu community is so deeply interested and prays that the same may be passed into law.

From the Acting Secretary, Berhampur Association and Reading Room, Berhampur, to the Assistant Secretary to Government, Legislative Department, dated 27th May 1891.

I have the honour to forward herewith, for the information of His Excellency the Governor in Council, the following resolution of the Berhampur Association and Reading Room passed at a meeting held on the 10th of April 1891 regarding "the

Hindu Gains of Learning Bill" introduced into the Legislative Council by the Hon. V. Bhashyam Iyengar, B.A. and B.L.:—

"The Association cordially approves of the principle as well as the details of the Bill and thanks the Honourable Mover for introducing a measure which without in any way clashing with the principles of the Hindu Law tends to remove a fruitful source of litigation and secures greater harmony in the domestic relations of a Hindu family. The association earnestly hopes that a measure so useful and necessary will meet with no frivolous opposition and will soon become law."

From C. V. NARASIAH, Esq., Barrister-at-Law, President, Coimbatore Bar Association, to the Secretary to Government, Judicial Department, dated 25th July 1891.

I have the honour to forward herewith copy of a resolution passed by the Coimbatore Bar Association at a meeting held on the 17th July 1891 with regard to the Hindu Gains of Learning Bill now pending before the Legislative Council.

Enclosure.

Proceedings of the Coimbatore Bar Association, dated 17th July 1891.

Resolved.—That the President be authorised to write to the Secretary of the Madras Legislative Council to the effect that, in the opinion of this association, the Hindu Gains of Learning Bill is an important legislative measure calculated to promote peace and harmony among members of Hindu families and to foster a spirit of individual enterprise and self-reliance, and that the association trusts that the Bill may soon be passed into law.

From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Assistant Secretary to Government, Legislative Department, dated Madras, 10th October 1891.

I have the honour to submit the accompanying memorial addressed to His Excellency the Governor in Council, Fort St. George, by the citizens of Madras on and in favour of the Bill "To declare Gains of learning by a Hindu to be his separate property" introduced into the Council by the Hon. V. Bhashyam Iyengar Avargal and solicit that the same may be laid before the consideration of the Members of the Council.

I have the honour to forward further ten copies of the said memorial for distribution amongst the members.

Enclosure.

Petition from M.R.Ry. P. SOMOOSOONTHRUM CHETTY and others, to His Excellency the Governor in Council, dated Madras, 21st September 1891.

May it please your Excellency,—We, the undersigned inhabitants of Madras, beg leave to submit, for your Excellency's benign consideration, certain important facts of which we are aware and on which we base our humble opinion in support of the Bill "To declare Gains of learning by a Hindu to be his separate property," lately introduced into the Legislative Council by the Hon. V. Bhashyam Iyengar Avargal.

2. Your memorialists have perused with much interest and care the "Statement of Objects and Reasons" which accompanies the Bill as well as the Laws framed by our ancient Hindu Legislators, and the opinions of the several Courts of Justice in India and those of the Privy Council on the subject-matter in question.

3. We observe with concern that the authority of one Lawgiver is set aside by another, and that the various commentaries on the same text are conflicting, vague and doubtful, as very properly observed by the introducer of the Bill. On the authority of such texts, suits are daily filed by the members of undivided families for participation in the gains of learning or "Vydyadhanam" acquired by one or two members of the house; and these suits are decided by the several Courts of Justice with reference to the opinions formed by them according to their own acceptation of the Hindu Law. This is fully exemplified by the issue of the suit brought by Chalakonda Alasani against Chalakonda Ratnachalam (*vide* II Madras High Court Reports, page 56) in which two of the most distinguished Judges of the Madras High Court, namely, Mr. Justice Collett and Mr. Justice Holloway, arrived at opposite conclusions. The former relied principally upon the texts of Manu and Yajnavalkya and the latter upon Mitakshara and on Katyayana's definition of "Vydyadhanam."

4. The law, as it now stands, affords no certainty of protection or safeguard to the educated men of the present day. There is no Act defining explicitly which kind of learning imparted by a father to a son, either at his own expense or at the expense of the family estate, makes the acquisitions of the latter partible or not partible. For instance, a father educates his eldest son up to a certain point at his own expense or that of the family estate; and the youth afterwards acquires sound learning according to modern standards by close application to his studies (for which he may have a special aptitude) with the aid of friends and by resorting to foreign lands to great personal hazard. The father spends money also on the education of his other sons, but these remain dull and illiterate, and the youth who secures a good education without the help of the father or of the family funds must needs part with his own gains and go shares with his illiterate brothers who have earned nothing; and all this for the simple reason of his juvenile educational expenses having been incurred by the father; what is even worse is that at the time of suits for partition in the gains of the learned brother, even distant cousins and relatives, with a view to get a share in such hard-earned money, hover like birds of prey around the litigants, each employing a solicitor on his behalf, when the usurers of money, who eagerly watch for opportunities to invest their funds to the best advantage, lend large sums to the parties concerned at exorbitant rates of interest, as was done in the Tichborne suit so well known to all. Thus suits for partition are originated and strengthened, and after undergoing the usual preliminaries, they terminate after the lapse of some year; and if the decision of the Judge who hears the suit happens to be against the defendant, *i.e.*, the learned son, it is simply ruinous to his immediate heirs or sons, and the property thus becomes a source not of happiness but of misery to the family of its real acquirer. This is the inevitable fate of the generality of the partition suits brought in the Courts of Justice; and thus there is no certainty in the minds of the learned that their hard-earned gains would go to those most dear to them after their death. The last paragraph but 4 of the "Statement of Objects and Reasons" gives a clear and succinct view of the disabilities under which we labour in the present state of the law. We beg to solicit your Excellency's attention to the words that the rule as it at present stands "cannot but act prejudicially to the interest, advancement and the material prosperity of the country in which such a rule is or is supposed to be in operation"; and we would add that it does not at all tend to the moral progress of the community. The heart-burning jealousy and consequent mental agony to which the several members of the family, including the young and the old, are subjected during the progress of a suit for partition are beyond all description. It estranges the son from the father, and makes children of the same womb deadly enemies of each other, and all this owing to the absence of a simple law such as the one now proposed by the Hon. Bhashyam Iyengar. In support of our statement, we beg to cite here the opinion given by Sir Richard Couch, Chief Justice of Bombay, quoted at page 2 of the "Statement of Objects and Reasons." The learned Judge says: "A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court."

5. The hard-earned savings of the learned are now eagerly sought after by his relatives who do not choose to labour for their bread, evidently unmindful of the old adage "Thou shalt labour for thy bread in the sweat of thy brow." The prospect of such participation which the law now holds out has prevented many a promising youth from doing his best for himself and his children.

6. We beg to allude here to an instance in which one of the signatories to this, our humble memorial, was put to heavy losses in connection with a suit for participation brought by the son of his uncle against the latter's brother. This suit is referred to at page 52 of Part 9 of 1877, Madras Series of Indian Law Reports. It commenced in 1872 and terminated in 1877. The family in the meanwhile underwent much agony during its prolongation, and it taxed the estate under litigation to the extent of Rupees seventy thousand or thereabouts. It was ably defended by the late Mr. John Bruce Norton, Barrister-at-Law. He then expressed himself as follows:—There remained only the question as to the effect of education. On this point the appellant's arguments proved too much; for, if as he contended, the effect of being educated made all the gains of an educated man joint, then no educated man could ever acquire anything for himself: as to the authorities cited, the texts of the Mitakshara were alone to have weight given to them. The Smriti Chandrika and Madhavya were not of the same authority." The nature of this suit is clearly given by the introducer of the Bill in his "Statement of Objects and Reasons" and in other memoranda on "Hindu Gains of Learning Bill," and we consider it needless to trouble your Excellency with any particulars thereof. The above is only one of many instances of this kind occurring in Hindu families, and in some of them both parties the suit have been utterly ruined.

This is noted in the Indian Law Reports, Part 9 of 1877, August 1, page 256.

7. We need not add that many influential Journals here and in the other Presidencies have written strongly in favour of the Bill, and proved the necessity of passing it into law And we beg to submit that your Excellency will be conferring a real boon on thousands of Hindu families by getting a law passed in terms of the Bill now laid before the Legislative Council; the measure will remove much of the present uncertainty, anxiety, and the consequent suffering in the minds of persons acquiring wealth by their own labour and of their heirs. We beg to add

that the introducer of the Bill as very properly prayed for the omission of all technicalities and texts now observable in a Court of Justice in suits for partition, under the plea that the educational charge on account of the testator of a will was borne by the family and that he had therefore no right to dispose of his earnings as he chose. Mr. Bhashyam Iyengar's prayer for the enactment of a simple and uniform law, we most earnestly and warmly support; and we commend the measure in its entirety to your Lordship's consideration, with an humble but confident hope that the Bill will be passed into law at an early date.

8. We conclude our humble memorial with the expression of our belief that the passing of such an enactment, as the one now proposed, will mark a memorable era in the annals of the British administration and will tend in no small degree to the advancement of the material as well as the moral progress of India; and we are gratified to find that it falls to your Excellency to pass it and thus cause your name to be remembered with gratitude through the length and breadth of the land by thousands of families, for the peace and happiness which the law secures to them.

From the Hon. V. BHASHYAM IYENGAR, to the Assistant Secretary to Government, Legislative Department, dated Mylapore, 2nd May 1892.

I received your letter of the 1st of August last and a copy of the despatch which has been received from the Secretary of State in regard to the Hindu Gains of Learning Bill. As desired in your letter I send enclosed a note containing my views on the despatch generally and my suggestions as to the only practical mode of ascertaining the views of the public on the proposed measure.

Owing to the great pressure of professional work and to the fact that the matter was not emergent, I regret I was not able to reply to you earlier.

Enclosure.

Note on the Hindu Gains of Learning Bill.

I may first dispose of the suggestion made in the concluding paragraph of the despatch from the Secretary of State "that the proposed measure involves the alteration of a law which the persons governed by it may regard as part of their religious code," and that in that view the sanction of the Governor-General will be necessary under section 43 of 24 and 25 Victoria, Chapter 67, before the Bill is introduced into and considered by the local Legislative Council. Clause 5 of the said section 43 is as follows :—"Affecting the religion or religious rites and usages of any class of Her Magesty's subjects in India."

The proposed measure which simply declares that all acquisitions made by a Hindu by means of his learning shall form his self-acquisition and thereby removes the existing uncertainty in the administration by Court of Justice of that portion of Hindu law which deals with acquisitions by means of learning does not seem to me in any way to effect either directly or indirectly the religion of any class of Her Majesty's subjects and much less the religious rites and usages of any such class.

It is difficult to see how the measure can be regarded as even remotely affecting the Hindu religion in any manner, even in cases where a proposed legislative measure does not in reality affect Hindu religion it is not uncommon that it is objected to by particular sections of that community on the favourite ground that it is an interference with their religion.

The strongest proof that the measure in question which it is obvious does not really affect the Hindu religion is not even regarded as such by any section of the Hindu community is afforded by the fact that no such objection has as yet been raised to the measure either in the newspapers or in any of the memorials, though the Bill has now been before the public for upwards of a year. I do not therefore think that the previous sanction of the Governor-General is necessary for the introduction of the Bill in the local Legislative Council. If such sanction is considered necessary for this Bill, almost every measure affecting Hindus which is introduced in the local Legislative Council will have to be regarded as affecting the religious rites and usages of Hindus.

As observed in the Despatch the proposed measure no doubt "relates to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India," and if the Governor-General should be in favour of its being introduced into the Supreme Legislative Council and applied to the whole of British India, it will of course be unnecessary now to introduce it in the local Council.

Whether the necessity for the proposed Bill exists or is felt to the same extent elsewhere as in the Presidency of Madras is a point on which I can express no opinion. The existing evil works the greatest hardship in the Marumakkatayam and Aliasantana systems of Hindu law obtaining on the West Coast which do not admit of an individual member becoming divided

except with the concurrence of all the other members of the family. Under the Dayabhaga law of Bengal the evil could not be felt to the same extent as under the Mitakshara or the Benares school of Hindu Law for three reasons:—

1*stly*—Because under the Bengal school each member of an undivided family is the separate owner of a definite share in the family property and such share is at his absolute disposal and in the event of his dying intestate descends to his separate heirs;

2*ndly*—Because sons in Bengal acquire no right by birth even in ancestral property of the father and cannot claim as against the father partition of such property; and

3*rdly*—Because as pointed out in my introductory speech the Bengal commentators have dealt with this topic of Hindu law in a more liberal spirit than commentators of other schools.

As an instance of Legislation on a general point of Hindu law by a local Legislature I may refer to Bombay Act VII of 1866 usually cited as the "Bombay Hindu Heirs Relief Act" and Act No. XII of 1873 amending the same.

The topic of Hindu law dealt with by that Act is essentially of a general character and more emphatically common to all systems of Hindu law than the topic of gains of science dealt with by the present Bill.

The other Bill relating to the succession of a Hindu sister and sister's son which I have not yet obtained leave to introduce is essentially of a local character and not one of general importance and interest throughout India.

I beg to take this opportunity of expressing briefly my views on the question as to the direction which, in my opinion, Legislation should take in the matter of Hindu law.

The Hindu law in itself is sufficiently elastic and admits of wide scope for its development and advancement by the growth of customary law. The commentators of recognised authority also had considerable influence in moulding and modifying the Hindu law, though it must be confessed that in some instances the weight of their authority was brought to bear not in the direction of progress but the very reverse. Under the administration of justice by British Government owing to the existence, expansion and improvement of regularly constituted tribunals and the facilities which are afforded to its subjects of readily resorting to courts and employing skilled advocates to vindicate their rights, the moment they are infringed there can hardly be any scope for the growth of customary law which would correct and modify the old Hindu law except among the poorest and most backward classes and communities. As for commentators they cannot of course exist now having anything like the authority of the old commentators under former Native governments The various judicial decisions on questions of Hindu law in the Indian Law Reports may be viewed in a certain sense as corresponding to such commentaries. But it must be borne in mind that Judges trained in the school of English law and judicial interpretation and anxious to interpret and administer native laws strictly and faithfully are far too judicial and conscientious to supply the place of the Hindu commentators of old who assumed far greater liberty and latitude in effectually advancing and moulding the Hindu law, though under the guise of commentating upon the original texts or Smritis.

It is therefore I think the duty of the British Legislature to advance the Hindu law and adapt it to the conditions and sentiments of modern Hindu society without of course doing violence to any of its fundamental or leading principles. If the British Legislature should withhold its helping hand, the Hindu law under the British Government will become crystallised and the growth of customary law arrested by the active force of the judicial tribunals. In other words so far as their substantive laws of inheritance and property are concerned natives would under British rule be decidedly in a less favourable situation than under native rule. It will not be out of place to refer here to the forcible and significant observation of Mr. Justice Muttusami Iyer in Venku *versus* Mahalinga [Indian Law Report, 11 Madras, pages 400 and 401] decided in 1888. "Is not therefore the cessation of the usage indicated by the Privy Council the sound basis for judiciary action, especially when there is a standing Legislative Council and when only very imperfect material is available to a Judge who is bound to decide according to evidence for ascertaining whether to any and what extent there has been a substantial change in the sentiments of the large mass of the Hindu community in regard to a particular usage of a section of the Hindus? . . . . . Is it not also a sound rule of legislative policy that judiciary legislation of the earlier period should gradually retire within the narrow limits of judicial interpretation in proportion to the increased activity of direct legislation through organised bodies?"

Any one conversant with the Law Reports cannot fail to be struck with the fact that the mass of litigation arises out of Hindu family law and that owing to the obscurity of that law in not a few points of the gravest practical importance or to changes in Hindu society and the growth of new ideas and rights the Judges are considerably embarrassed in solving some of the questions which present themselves for judicial decision according to Hindu law. By way of illustration I may here quote the following extract from a judgment of Mr Justice West who made Hindu law his special study: "It is to be regretted that we should have to deal with important civil rights by reference to principles which almost elude our grasp when we endeavour to give them a practical application, but we must in matters of inheritance administer to the Hindu community such a law, however, vague and nebulous as it has been, content to devise for

itself or to accept from tradition" (*vide* Indian Law Report, 2 Bombay, p. 449). No doubt the task of modifying Hindu law and adapting it by legislation to the requirements and exigencies of modern Hindu society is a very difficult and delicate task and one which should be undertaken but gradually and with greatest caution. It will of course be not possible for many years to come to undertake the complete codification of the Hindu law or even a considerable branch thereof. But in reference to particular points or topics of Hindu law out of which litigation mostly arises in consequence of the vagueness and uncertainty of the law applicable thereto, there can be no difficulty in setting them by an authoritative legislative declaration of such rules and adapting them as far as possible to the existing state of things. There is an immense waste of public time and judicial power in dealing with these vexed questions which in spite of previous decisions thereon constantly crop up in some shape or another. The measure now proposed is exactly one of this description, and such innovation as it introduces is no more than what is necessary to do away with a distinction between ordinary and scientific or extraordinary education, a distinction on which the law as now existing and enforceable is supposed to be founded.

In the Statement of Objects and Reasons appended to the Bill and in my introductory speech, I have fully explained how impracticable and even fanciful it would be to decide in a particular case whether the education by means of which property was acquired by a Hindu was ordinary or scientific; and how problematical it will be to decide in the great majority of cases years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the measure is in the spirit of, and in conformity with, the Smriti or the original sacred law on the topic of gains of science.

Legislation will take a very beneficial direction if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of great practical importance and sometimes it may be to correct the effects of a judicial decision. Legislation in such direction will in no small degree check that class of speculative and gambling litigation which is now the result of uncertainty and vagueness in the law and which is often started in view to obtain certain concessions by a compromise.

One can hardly conceive that an additional native member of an Indian Legislative Council can render more appropriate or valuable services to his countrymen and to the Government than by initiating such measures with due regard to the feelings, sentiments and requirements of the native community or a considerable section thereof. Having regard to the fact that different schools of Hindu law prevail in different provinces that the customs and habits of Hindus in different provinces are very divergent and dissimilar and that certain communities and provinces are more advanced than others, I am of opinion that, as a general rule, legislation in matters of Hindu law should take place in the respective local Legislative Councils and not in the Supreme Legislative Council.

At the commencement and for a considerable time legislation in matters of Hindu law can only be fragmentary, and such legislation is not without its advantages in that it will deal only with questions of practical importance pressing for legislative interference and deal with such points more thoroughly and carefully than in a general code of Hindu law.

This process of Legislation will eventually form a sound basis for a codification of the Hindu civil law, a task which can be appropriately undertaken only by the Supereme Legislative Council. A portion of such code will be of general application to the whole of British India and the remainder will have to deal with the local law specially applicable to different provinces. Until the civil law of Hindus is codified that law which concerns natives most and concerns them more than any of the several codes passed by the British Legislature will continue in a very unsatisfactory, if not chaotic, condition. The codification of that law will be the highest achievement by the British Indian Legislature and the greatest and everlasting benefit which it can confer upon the native community. If the Indian Legislature undertakes the task, I have no doubt that it will be accomplished in course of time, and when it is accomplished, the wonder will be not so much that it was at last done, but that it had to be delayed so long.

I am specially asked whether I can suggest any means other than those already adopted of ascertaining the views of the public on the proposed measure. There is always the greatest difficulty in ascertaining public opinion in this country on particular legislative and other measures affecting the general welfare of the native community.

In the first place the exact scope and object of a proposed measure is not understood except by a small section representing the enlightened and educated portion of the community, and as far as any public opinion exists in this country among the orthodox natives it can be ascertained only through the medium of leading natives who occupy a prominent position in the public service and in other walks of life. The measure in question, though one of great practical importance, is rather of a technical character, and but few people understand or can understand what the present state of the law is on the subject, especially as it is one of great vagueness and uncertainty.

The measure is not one which calls for the appointment of a commission for the purpose of ascertaining public opinion by taking evidence in the various districts. It really does not introduce such an innovation in Hindu families, law or usages as to call for such a step. The Bill with the Statement of Objects and Reasons and the introductory speech have now been before the public for upwards of a year, and if it was regarded as revolutionary of the existing state of things or otherwise objectionable or obnoxious, there would have been the strongest opposition to it from various quarters. As far as I have been able to judge both from memorials and from what appeared in the newspapers the measure seems to meet with general approval, and the opposition to it is but little, and that based upon an entire misapprehension of the existing state of the law and of the scope and effect of the Bill. This is specially the case with regard to certain criticism in the vernacular newspapers and one or two Anglo-Indian Journals. It is assumed erroneously that all acquisitions made by an undivided member of a Hindu family by means of education is under existing law joint family property, and the fact that a member of an undivided Hindu family who has received a high and scientific education at the expense of the family can, when he begins to earn by means of such education, become divided under such law, though it may be only by a suit when the other members resist or evade his proposal to become divided is entirely overlooked. One of the natural effects of the proposed measure must be to arrest the unnecessary breaking up of Hindu families and certainly not to break up such families as erroneously assumed sometimes. The absence therefore of anything like real opposition to the measure by means of memorials or otherwise is, I think, the strongest proof that the measure commends itself to the Hindu community in general. If there are not more memorials in support of the measure and more public meetings held in support thereof, I have reason to believe that it is due to the impression that is generally prevalent in this country that such steps in regard to legislative measures are necessary only when disapprobation has to be expressed.

The measure is of a character in which the Honourable the Judges of the High Court and other judicial officers of experience in the Presidency may, with advantage, be specially consulted and opinions may also be invited from several leading native gentlemen in the presidency. If this suggestion meets with approval and I am desired to suggest names of gentlemen to whom the Bill may be referred for opinion, I shall be happy to do so. Though I have carefully thought over the matter, I am unable to suggest any other practical mode of ascertaining public opinion on a large scale, and, in my opinion, the Bill is not of a character which calls for a more extensive enquiry.

Mylapore,
20th May 1892.

(Signed) V. BHASHYAM IYENGAR,

Demi-official from M.R.Ry. RAMA VARMA RAJA, Avargal, Malabar, to the Under Secretary to Government, Legislative Department, dated Paraponad, 18th September 1892.

The Hon. Mr. Bhashyam Iyengar's "Bill to declare gains of learning by a Hindu to be his separate property" is intended to supply a long-and-much-felt want, I am not aware of opinions differing on the desirability of a legal declaration to remove all doubts as to the ownership over property acquired by one by means of learning.

From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Secretary to Government, Legislative Department, Ootacamund, dated Thoindiarpett, 19th September 1892.

I have the honour to acknowledge the receipt of your circular of the 31st ultimo, No. 47, with copy of a "Bill to declare gains of learning by a Hindu to be his separate property" and inviting my opinion thereon.

I have the honour to refer you to the memorial addressed to His Excellency the Governor in Council setting forth my opinion* and other members of the Hindu community on the draft Bill in question, and which was submitted to His Excellency the Governor and the members of Council, bearing date 21st September 1891. As the memorialists had maturely considered and submitted their opinion on the subject-matter in which I perfectly concurred and subscribed there is no necessity of my troubling you further with the same. However, to have the subject brought again to the consideration of Council, I transmit by book-post five copies of the said memorial for the information of the Council.

* Printed at pages 3 to 5.

Demi-official from M.R.Ry. K. KRISTNASWAMY RAO, Avargal, Trivandrum, to the Secretary to Government, Legislative Department, Ootacamund, dated Trivandrum, 20th September 1892.

In reply to your letter No. 47, dated the 31st ultimo, calling for my views on the Bill to declare gains of learning by a Hindu to be his separate property, I beg to submit the following for the consideration of His Excellency the Governor in Council:—

The present state of the law on the subject of the gains of learning is so unsettled in this Presidency that it is highly desirable that the Legislature should clearly define and declare it. The main objection to the Bill introduced by the Hon. V. Bhashyam Iyengar is that it does not exempt from the operation of the proposed law, the cases in which the acquisitions of a Hindu are distinctly traceable to the *special* education given to him at such a heavy cost to the family as would raise an irresistable presumption that when the expenditure was incurred, it was considered as an investment. It is nothing but reasonable that those who have materially contributed to the success of the acquirer should expect some substantial return from him. I am not unaware of the difficulty of enacting provisions which would satisfactorily meet every exceptional case. But I have strong reasons to believe that without some provision exempting the cases of this exceptional character from the operation of the proposed law, the Bill will not be acceptable to a great majority of the Hindu community.

From M.R.Ry. R. RAGOONATH ROW, Avargal, Madras, to the Secretary to Government, Legislative Department, Ootacamund, dated Mylapore, 23rd September 1892.

In acknowledging the receipt of your printed note of the 31st August 1892, No. 47, I beg to state that the provisions of the Bill "to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council, appear to me to be not contrary to the spirit of the Hindu law on the subject. I believe that, if they be enacted into law, it would render the administration of that department of the Hindu law uniform and certain and it would prove beneficial to the Hindus.

From M.R.Ry. C. NAGOJEE RAU PANTULU GARU, B.A., Inspector of Schools, Northern Circle, to the Secretary to Government, Legislative Department, Ootacamund, dated Rajahmundry, 23rd September 1892.

As requested in your letter No. 47, dated the 31st ultimo, I have the honour to submit my views on "a Bill to declare gains of learning by a Hindu to be his separate property" which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council.

2. The Bill proposes to lay down the law clearly on a point on which Hindu law books and the decisions of Courts are apparently divided. The point is.—Are the gains of learning of a Hindu, when he is a member of a joint family, to be treated as part of the family property or as the exclusive and separate property of the earner? The Bill proposes that they should be treated as separate property. If certainty of law were the only object in view, it would be equally well attained by declaring that all gains of learning are to be treated as family property. And this would, in my opinion, be in accordance not only with the Madras High Court decisions, but also in consonance with the feelings and sense of justice of the bulk of the Hindu population of this Presidency.

3. Until very recently English education, even University education, cost little or nothing, and the gains to a man who had received it were great, disproportionately so considering the cost of the education. So the feeling that the family which has contributed little or nothing towards fitting them up for their calling should have no right to their earnings has been widely prevalent among educated men, and it is this

feeling which appeals to their self-interest, and which is backed up by moral indignation against the drones of their families, that has evidently induced the Hon. V. Bhashyam Iyengar to introduce his Bill into the Legislative Council. But we should look a little ahead. Circumstances are rapidly changing and education is becoming costly and the gains of learning much smaller than they have hitherto been. We should, therefore, consider how, in the altered circumstances, the proposed measure will affect the bulk of the Hindu families from which come the members who profit by learning. We may take as a type a family consisting of a father, a mother and three sons, with landed or other property of the aggregate value of five thousand rupees—rather a high figure for this country in my opinion. The father spends about Rs. 2,000 in giving one of the lads an University education, sets up a second in business, giving him a capital of Rs. 1,000, and makes the third lad look after the lands left, worth, we shall say, about Rs. 2,000. It is just possible that aided by their intelligence and industry and favoured by fortune, each may earn four or five thousand rupees in the course of ten years. The time for partition comes. The Bill under reference would give the English educated brother the whole of his own savings + $\frac{1}{3}$ of what is left of the original family property and $\frac{1}{3}$ of the savings of each of the other two brothers. This division, I beg to submit, will commend itself to none but the educated Hindu. It would certainly be fairer to treat his earnings, like the earnings of his trading and farming brothers, as part of the family property.

4. To take another case of constant occurrence. A father has three sons of varying ages, one 15 years, one 7 years and 2 years old, we shall suppose. He may spend Rs. 2,000 out of his total property of Rs. 5,000 on the education of the eldest son, hoping that, when he begins to earn, he will be able not only to maintain the family but educate his younger brothers: but, if the law clearly lays down that all his earnings are his separate property, he will feel no moral or legal obligation to support his parents in their old age or to give his younger brothers a suitable education. The father will have benefited one son at the expense of the others. When this danger is recognised by the thinking portion of the community, the practice of educating one member in the hope that not only he but the others will also be benefited by it, will cease, and seriously check the progress in education and wealth of middle-class families.

5. It may be said that the Bill places the educated and earning man in no better position than he would be in if he got himself divided from his family at the moment he began to earn; but would he think of so dividing himself? In most cases, not. In the first place love of parents. brothers and sisters has not had time to grow weak: himself and his young wife require the help of the family: his wife has not grown old enough to see that her interests suffer and has not acquired sufficient influence over him to make him quarrel with his parents and other relatives and brave the censure of his community by seeking partition: and, lastly, the savings are small at the commencement, and until they come up to a respectable sum, the love of money is weak. Things change in the course of about ten years, but by that time the man who has been educated at the cost of his family has benefited the others to some extent, and a partition will not then generally be to the injury of any one in particular.

6. The joint family system is a great blessing in a poor community. None but people intimately acquainted with Hindu families can know how it is possible for two or three brothers to live honorably and comfortably together on an income of Rs. 300 a year in a village, when it would be difficult for each man to live on Rs. 100. A joint family is often able to educate some of its younger members, carry on a respectable business and acquire and manage a large landed property, things which its members would not be able to do, if their interests were divided. Above all, the joint family keeps its members from begging. No hasty blow should, therefore, be aimed at it. The system has its drawbacks and evils: but for these the Hindu law provides a remedy. When the joint family style of living is no longer beneficial to a family or becomes distasteful to one or more of its members, they can either amicably, or, with the assistance of Courts of law, have their interests separated.

7. I would therefore condemn the Bill: first, because it strikes a blow at the joint family system which is on the whole beneficial in a poor community like ours; secondly, because it being conceded for argument's sake that the system is an injurious one,

the Bill is an unjust measure, as it would only benefit a small fraction of the population, a section that is best able to take care of its interests, at the expense of the others; and, thirdly, because the measure would be unpopular with Hindus in general.

8. On the other hand a measure which would declare that all gains of learning of a member of a joint family are family property and that in suits for partition of property, the members who have been educated and married at the cost of the joint family or a member of such family should get shares less than those of members not so educated or married, by an amount equivalent to the cost of such education and such marriage, a measure like this would be both just and popular.

From M.R.Ry. P. PUNDARIKAKSHUDU PANTULU GARU, Deputy Collector, Vinukonda, to the Under Secretary to Government, Legislative Department, dated Vinukonda, 24th September 1892, No. 719.

In reply to your No. 47 of the 31st ultimo, enclosing copy of a Bill to declare gains of learning by a Hindu to be his separate property and calling for my views of the same *as briefly as possible*, I have the honour to state as follows.

2. As to the Hindu law on the subject as administered in our courts, there is little that I can add to what the learned Hon. V. Bhashyam Iyengar has said. As to the advisability or necessity of legally declaring that gains acquired by one by learning form his separate property, I was at first sight of the same opinion as the framer of the Bill, but I come to think that it is neither necessary nor advisable to legislate on the subject for reasons hereinafter given.

3. I consider it unnecessary to legislate that the gains of a person by learning shall not be divisible among his brothers or father, because it is open to that person at any moment to make a formal division of the family property; in other words, to become divided from the others of his family, so as to secure to himself all the gains of his learning. If he wishes that others of his family should not reap the benefit of his education, he must take steps at once to effect a division.

4. I think it inadvisable to legislate that gains of one's learning are his separate property; in other words, that they are not divisible among his brothers or others. It is an open secret that, as circumstances are in India, there is the general inclination among Hindus of educating their sons in English and of seeing them employed in the public or other respected service. They consequently bear the expenses of costly education. As my knowledge of the world proves, there is hardly a Hindu father now-a-days who hesitates to part even with his ancestral property by sale, mortgage or otherwise, for raising funds to educate his children. Suppose he has four sons the eldest, of course, comes in first for being the object of expenditure. In his desire to educate this son, the father spends all that he finds necessary, it may be at the sacrifice of the interests of his other sons. In educating his eldest son, he has no doubt a double object, viz., to make that son not only useful to himself, but also to his younger brothers. He does not see that these latter suffer because he feels sure that his eldest son has exactly the affection for his brothers as he himself has for them. His dealings, therefore, are honest, fair and desirable, according to himself, but it would be quite another thing when it is decided that a man's earnings by education imparted at the sacrifice of the interests of his brothers are not to be divided among all of them.

5. My remarks above given apply, *mutatis mutandis*, to the case of a brother who happens to be the managing member of the family. If costs of the education of the one or more of the brothers are met from the family funds, it seems undesirable to rule that the earnings of the educated should not be divided among the brothers whose shares of family property have been used up for the education which brought forth the earnings.

6. Again, take the case of a family consisting of two or more brothers, one of whom is a successful pleader of a bar and makes a large fortune. Suppose he has also paternal or other property in land, houses or money, he naturally employs his brothers in the cultivation or management of that property while he sets himself free for the duties of his profession as a pleader. I ask whether he ought to be allowed

to enjoy in full the profits of his legal profession to the exclusion of his brothers and yet allowed to participate the fruits of all the labours of his brothers as though he has contributed his own labour as well as the others.

7. Again, take the case of a brother who goes away from his country for years to a place like Benares or Calcutta for receiving education in Sanskrit or English, and leaves his brother or brothers at home to maintain his family and children during that time very often by their own earnings. Would it be right for him to deny to his brother or brothers all participation of his subsequent earnings by his education? I certainly think not.

8. I am therefore of opinion that, so long as one chooses to live together in union, he must be prepared to divide the fruits of his education among his brothers as well as he too readily would share the fruits of their labours in open fields under scorching sun or in stormy weather. A Hindu family is, in all its features, a joint trading company where no objection on any principle is urged to the division among the members of the profits arising from the business of that company.

9. It is, after all, impossible to decide with any certainty the exact profits earned by each individual brother. It is not feasible to keep any accounts of the value of the work of each brother, for, what is of value in one sense is not in another. It may be that one brother earns a large fortune by pleadership acquired by learning, but a brother who remained illiterate and indolent at home happens to resist a band of dacoits entering the house and save thereby all the property which would but for his gallant conduct have all been carried away. Would it be rational to tell him at the eleventh hour that he had nothing to expect in the division of property, because his other brother had acquired it by learning and stored it in the house in his charge only to stand the risk of being murdered by the dacoits.

10. My contention is that, so long as persons live together, they must consent to divide the property among all of them in the same way and to the same extent as members of a joint mercantile firm, no matter whether the earnings are those of education, meritorious or gallant conduct, or the like. It is unnecessary to state that while one makes use of his head in acquiring money, another uses his body and runs the risk of all comfort and, it may be, even life at times. The remedy for an educated and successful member of a family who murmurs to divide his earnings among his own brothers or others similarly circumstanced is, in his own hands, to wit, to enforce division of the family property and to call for no special legislation to protect his interests.

From M.R.Ry. S. GOPALA CHARI, B.A., B.L., Subordinate Judge, Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Palamcottah, 26th September 1892.

In pursuance of the requisition contained in your letter No. 47, dated 31st ultimo, I have the pleasure to submit the following observations on the "Gains of Learning Bill" now before the Legislative Council:—

(1) That an evil loudly crying for redress exists cannot be doubted.

(2) That the remedy proposed is in the shape of a legal provision, which has been framed skilfully and couched in intelligible language without violating any undeniable or settled principle of law or recognized and binding custom, and which can be worked out in practice without friction or difficulty, cannot be gainsaid.

(3) That the results of the measure will be far-reaching and beneficial may safely be accepted or the exposition and expectations contained in paragraph 5 from the bottom of the "Statement of Objects and Reasons." The only matter on which a doubt can with any show of reason be suggested is as to whether the enactment will not deter the free advance of funds for the education of youths in certain conditions of the Hindu family. Where the father or grandfather of the boy is living, though he may have undivided uncles with or without male issue, no difficulty will arise. Where the father or grandfather is dead and there are no undivided uncles or cousins or other co-parceners, difficulties will be equally absent. But the only case in which any difficulty may arise is where the father or grandfather is dead and there are

undivided uncle or uncles, cousin or cousins, constituting the joint family with this boy. Then it may be feared that the uncle or cousin will not, in the face of this unequivocal law, advance funds for the education of the boy, while there is no legal right to enforce a reimbursement of the advances or to claim a share in the after-acquisitions from the education so imparted. But it seems to me that as civilisation, enlightenment, liberalism and high example increase and permeate all classes, narrow prejudices and petty feelings would subside, and that good sense, a desire to maintain self-respect and secure the esteem of neighbours and relatives, and the prospect of elevation in the social scale, if not materially also, will prevail. Further, in such rare cases of default or apathy, and they will be only rare, a disruption of the family and a partition demanded by the boy or his relatives will result which can be the only immediate consequence, but the facilities and freedom of the boy in the matter of his education will be enhanced and society is not likely to fare worse, nor the community to suffer substantially, for such few instances. Hence I would humbly pronounce the measure to be nevertheless a wholesome one.

(4) I would respectfully suggest that for the word *family* in line 1 of clause (*b*) of section 3 of the Bill some other expression be substituted. For the words "such family" lower down in that clause are intended, I presume, to refer to the comprehensive "Hindu family" mentioned in paragraph 1 of section 3 and not to the wife and children of the solitary member who makes the acquisition, whereas, as the wording now stands, the expression "such family" in clause (*b*) would, I think, grammatically refer to "his family," *i.e.*, the limited household of that individual.

2. Craving leave to express my deep sense of the high honour done to me.

From M.R Ry. K. SUBBA RAO PANTULU Garu, Deputy Collector, Pyápali Division, Kurnool District, to the Assistant Secretary to Government, Legislative Department, dated Pyápali, 26th September 1892, No. 969.

I beg to acknowledge, with thanks, the receipt of your letter No. 47, dated 31st ultimo, asking for an expression of my views on the Bill to declare gains of learning by a Hindu to be his separate property.

2. The Bill proposes to remove all uncertainty as to the extent of the right, which a member of a Hindu family has over property acquired by him by means of learning imparted to him by any member of the family or from family funds and to declare such property to be the exclusive and separate property of the acquirer. The Bill, if passed into law, shall apply to the Hindus and not to members of any other religion.

3. Before entering into the details of the Bill, I submit that this is a general question applicable to Hindus in all parts of India, and therefore the necessity or otherwise for the Bill is to be determined in the Imperial Legislative Council.

4. So far as my poor knowledge goes, I submit that the Hindu law is not in favour of the principles of the Bill.

5. Self-sacrifice is the motto of Hindu religion. Worldly wealth or fame has no weight in the eye of the Hindu law. The great sovereigns Balichakravarti, Shibi and others and venerable sages, such as Dadhíchi and others, as we read in Bhágavat, had tendered their bodies for the sake of others. To Hindus, who aim at both worldly and heavenly bliss, Shukráchárya expounds the law as follows:—

(8th Skhandam of Bhágavat) "Dharmáya, Yeshasé, Artháya, Kámáya, Swajanáyacha, Panchadhá, Vibhajan, Vittamihamutracha Módate." He, who divides his gain into five parts, *i.e.*, first for charity, second for acquiring fame, third for reserve, fourth for personal enjoyment, and fifth for relatives, enjoys happiness both in this and the other world. These are the general principles of the law. the transgression of which is a religious offence.

6. Even setting aside these ancient or otherwise called orthodox laws and ignoring the religious offences, I submit the Honorable Mover of the Bill did not show, in my opinion, real necessity for the Bill.

7. On the other hand, I submit the Bill will work hard in the following cases:— For example, A has two sons—B and C. A spends nearly Rs. 5,000 for the learning of B, the eldest, and he is graduated. C, being considerably younger than B, A could not spend much for his education. A dies without property before C passing any examination. After the demise of A, when B, begins to gain by learning given to him by A from family funds, he is relieved, if the Bill becomes law of looking to the education of C. Likewise A, father, without getting his two or three daughters and one or two sons married, dies, spending his gain for the learning of his elder son, B. The latter is left scot-free by this Bill from maintaining and getting the minors married.

8. As a rule, a Hindu father spends more money for the education of his elder son, or the brighter son, to relieve him and his relatives in his advanced age or after his death. The Bill acts injuriously upon the well-being of such families. Numerous instances of the kind may be cited. All these difficulties are met by the Hindu law as it stands.

9. It seems to be unwise that Government should create new rights not expressly sanctioned by the Hindu shastras in favour of a small section of the Hindus who gain by learning. The term Hindu is understood to mean any person who follows that religion, and if the rules of that religion would not sanction the provisions of the present Bill, I doubt whether he can call himself a Hindu when he takes the benefit of the new legislation. It is unjust on the face of it to say that the earnings of a member by learning imparted from family funds are not divisible. A Hindu is, as long as his means permit, bound under the law of his religion to provide for himself, his wife, his children, his parents, his brothers, his sisters, his uncles, his cousins, his maternal uncles, brothers-in-law, besides distant relations, house priests, learned and pious men, blind, cripple and helpless of both sexes, and so on. It is in consideration of this binding, the relations and dependants are required to observe pollution at the death of a Hindu, the period of pollution varying according to the degree of relationship.

10. A conservative Hindu who desires to secure his gains of learning for himself has the remedy in his own hands under the existing national law instead of seeking for State interference by means of legislation. Sir Richard Couch, Chief Justice of Bombay, very rightly observed: "There may be hard cases and the remedy is in the hands of the parties themselves, *i.e.*, to divide under the existing laws." A member can claim division as soon as he sees that he may earn better singly than jointly. If he adopts this course, there will be no occasion for litigation, and the member seeking the division shall have full rights over his earnings. It seems a retrograde step for the State to legislate in this matter and create a title in favour of the ablest men. Practically among Hindus poor relations look to rising men in wealth for support. Where a man earns by his learning, his sympathies are mostly with his relations and dependants and he helps them in the shape of meals, cloths, monthly stipends or presents.

11. Suits for partition cannot be highly ruinous except in cases where two brothers earn more than the other members of the family and each of them contends that he earned more than the other. Such cases must, of course, be left for the Law Courts to decide upon the merits of each suit.

12. As a rule, State should be neutral in matters such as these where the question of one's rights under the law of their religion is involved. The proposed measure will gradually reduce to poverty many persons who have been dependent as of right upon their well-to-do relations. Parents are bound by the laws of every civilised nation to protect their children and train them for any of the walks of life, and it is certainly an admitted fact that the son has a duty to perform towards his parents and protect them in their old age. When the parents die, the son has, among Hindus, to perform the funerals and annual ceremonies. It is plain that birth itself is sufficient to make one responsible for the interests of the other members of the same family.

13. I submit that learning alone is not sufficient to acquire a large fortune. Inheritance does not follow learning. Birth carries with it inheritance. I ask whether or not the property acquired by inheritance is divisible. The Hindu law

as it now stands meets all such cases according to the nature of the position of a Raja, Zemindar, Matadlupati or other persons whose property is sought to be divided. In the same way the Law Courts alone should, I think, decide what liberal and equitable share should be allowed to the acquirer out of the gains of learning. For instance, the members of a joined Stock Company cannot arbitrarily be denied all profits accruing from the increased skill and labour of one of them, though perhaps it is just that the latter should be remunerated more than others. It seems to me therefore unnecessary that a Bill should be passed for the exclusive benefit of persons who by a mere stroke of fortune, I may say, acquire gains by some learning, profession or otherwise. All disputes of the kind are generally most amicably settled, with perhaps a few exceptions, without resorting to Law Courts. I have known instances where persons have relinquished their right altogether to family property in consideration of their being able to support themselves by other means and of their brothers not being so successful as themselves. Some have even gone further by recouping family funds which bore the expenses of their thread marriage and other ceremonies. On the whole, I submit, it does not seem to be in accord with the principles of the Hindu religion to say that gains of learning is not divisible.

14. If, however, the preponderance of opinion is in favour of the Bill, I would propose, for the consideration of His Excellency the Governor in Council, that a moiety of the gains of learning be declared divisible.

From M.R.Ry. T. VENKASAMI ROW, to the Under Secretary to Government, Legislative Department, dated Mylapore, 30th September 1892.

In reply to your letter of the 31st August 1892, No. 47, I beg to state that an enactment as proposed by the Hon. V. Bhashiyam Iyengar, "to declare gains of learning by a Hindu to be his separate property," seems to me desirable.

2. The exhaustive enunciation of objects and reasons annexed to the Bill leaves very little to be said as to the uncertainty which exists with regard to the state of law on a subject of so much importance and the desirability of removing it in the interests of domestic peace and prosperity.

3. I do not think the Bill can be said to overrule a distinct rule of Hindu law, seeing that the law is involved in so much doubt. Indeed, it seems questionable whether at the present day the earnings of a Hindu can be regarded as "Gains of science," which the law-givers intended should in the case of an undivided member educated at the expense of the family be divisible. So far as it is possible to deduce the intention of Smriti writers from more recent judicial interpretations they seem to have recognised a distinction between gains of ordinary or general education and those of which a special training for a particular profession is the direct source. The former they considered impartible on the presumption apparently that the share of each co-parcener in the family property must cover such education of a general character as he receives, and it is to the latter that they restricted the principle of partibility. But in thus excepting property acquired by special learning from the general rule applicable to self-acquired property, they apparently had in view special learning limited to a small number who owe their earnings solely to it. They could scarcely have contemplated a condition of society, such as the present, in which higher education is so widely spread that it does not alone enable a man to earn more than a decent livelihood, and when one's career in life proves more successful, he owes it chiefly to his natural abilities and industry.

4. It does not clearly appear that either the authors or commentators of Hindu law draw a line between *ordinary* and *extraordinary* gains of learning, but the practical application of any such distinction is out of the question.

5. On the whole it seems to me that the proposed Bill, while it is suggested by the dictates of natural justice, can scarcely be considerd to be repugnant to the spirit of Hindu law.

From K. C. MANAVEDAN RAJAH, Esq., C.S., to the Under Secretary to Government, Legislative Department, dated Chingleput, 30th September 1892.

I have to acknowledge with thanks the receipts of the Hon. Mr. Bhashyam Iyengar's Bill with copy of the objects and reasons, and to state that I fully approve of the provisions of the Bill and the reasons advanced in favour of it by the honorable gentleman.

It is a measure most eagerly wished for by all classes of educated Hindus, and I can conceive of no possible objection to it on reasonable grounds.

One may however be anticipated and that from Malabar. It may and probably will be said that the direct result of the Bill if it becomes law will be that all educated people will dispose of their gains of learning in favour of their wives and children; that it will not, as is now the case, be absorbed in tarward property; that in this case the tarward property would no longer prosper; and that the head of the tarward will not care for the education of the members, which in course of time will come to be neglected. I do not attach any value to the objection. As a rule most of the property is even now given away to wives and children in the lifetime of the owner. This is generally recognized to be an underhand dealing, however necessary and beneficial it may be, and it is extremely desirable to legalize it.

With regard to the education of the junior members of a family, the responsibility of the head of the tarward is only theoretical. The practice which I may call almost universal is for the son to be maintained by his father and educated at his expense. I say almost universal, because I cannot remember with one exception any family educating the junior members thereof at its sole expense. I need not name the exceptional case, but all the same the exception proves the rule. In my opinion this measure will have no prejudicial influence on the education of the members of a Malabar tarward. On the other hand the benefits likely to be derived therefrom are incalculable.

From M.R.Ry. Dewan Bahadur S. SRINIVASARAGHAVA IYENGAR Avergal, to the Under Secretary to Government, Legislative Department, dated Ootacamund, 1st October 1892.

Adverting to your circular letter of the 31st August last, No. 47, asking for my views on the Bill "to declare Gains of Learning by a Hindu to be his separate property," which the Hon. V. Bhashiyam Iyengar has obtained permission to introduce in the local Legislative Council, I beg to submit the following remarks.

2. I understand the state of the law on the subject which the Bill in question deals with to be as follows—

(*a*) It is a recognized principle of the modern Hindu law that the self-acquired property of a member of a joint Hindu family is ordinarily the sole property of the acquirer and is not liable to partition among the other members of the family except with his consent.

(*b*) To the above rule the Hindu law recognizes an exception in the case of gains of science, in the acquisition of which family funds had been expended. In the application of the principle thus laid down in general terms, there is the greatest diversity of practice both among the text writers of the different schools of Hindu law and among the several High Courts of Judicature.

(*c*) The Madras High Court in a case decided in 1864 (and which forms the leading case on the subject) has laid down that "the gains or, at all events, the ordinary gains of learning and science which have been taught at the expense of the family funds are not impartible."

(*d*) The scope and precise signification of almost every word in the proposition above referred to is the subject of dispute. The ruling of the High Court leaves it in doubt whether it is to be considered as applicable to "extraordinary" gains of learning; and, if it is not, there is the difficulty of distinguishing between "ordinary" and

"extraordinary" gains; secondly, there is the difficulty of determining whether by "learning or science" is meant knowledge acquired by means of a general education which it is the duty of every family to impart to its members according to the standard in force in the community to which it belongs, or special technical knowledge and proficiency; and thirdly there is the difficulty in determining what amount of assistance from the family funds shall be considered sufficient to render the "gains of learning or science" partible, that is to say, whether the fact of the person to whom the knowledge is imparted is maintained out of family funds is sufficient, or whether the family should have made special and unusual sacrifices in view to his acquiring the learning or science.

(*e*) The Madras High Court in a subsequent case decided in 1872, where the question was as to whether the earnings of a vakil were partible or not, decided the question in the affirmative, Mr. J. Holloway, who was one of the Judges, remarking that "the ordinary gains of science by one who has received a family maintenance are certainly partible," and that, within the meaning of the authorities, a vakil's business is no matter of science. It is somewhat difficult to reconcile the premises with the conclusion arrived at, but, for the remarks of Mr. J. Kindersley, it appears that the decision was that the acquisitions of a member of a joint family, who was maintained out of family funds while receiving a *general education*, were partible. In another case (not reported in the authorized reports), however, where a Hindu had made a large mercantile fortune, his claim to hold it as self-acquired was allowed, though he had admittedly been maintained in his earlier years, educated and married out of patrimonial means. In another case, which went up before the Privy Council, they remarked that the proposition that if "a member of a joint Hindu family receives any education whatever from the joint funds he becomes for ever after incapable of acquiring by his own skill and industry any separate property" was a "startling" one. It was, however, unnecessary to decide the point in the case then before the Privy Council, but they intimated that it might be necessary to consider hereafter the correctness of the doctrine laid down by the Madras High Court in the two earlier cases above referred to.

(*f*) In these circumstances it is impossible to say what the law on the subject is in this Presidency, and the rapid advance of education, coupled with the uncertainty in the law on a vital point like the one under consideration, has been a fruitful source of family dissensions. In Bengal, the rule laid down is that acquisitions by a member of a joint family are partible only in case the funds of the family are directly made use for the purposes of the acquisition. In Bombay, on the other hand, the High Court has adopted a middle course and ruled that, to make the gains of learning partible, the education imparted at the family expense must be special and not a general one.

3. The object of the present Bill I take to be to declare authoritatively the law on the subject so as to avoid dissensions and litigation it gives rise to. The position taken up by the Madras High Court in its earlier decisions is, as pointed out by the Privy Council, so untenable and opposed to modern tendencies that it is unnecessary to consider it. The choice lies between adopting the rule in force in Bengal and that laid down by the Bombay High Court, and it seems to me that the Bill rightly adopts the former, and that, though there is an appearance of fairness in the Bombay rule, its application in practice will lead to endless difficulties and consequent litigation for the following reasons: First, the standard of education has been constantly shifting and of late years rapidly rising. I myself know that 30 years ago it would have involved a special sacrifice, owing to want of facilities for education, to educate a youth up to the standard of the Matriculation examination of the University; now education up to the B.A. standard is looked upon among the higher classes quite as a matter of course and not a special investment for the benefit of the family; and in a few years more education up to the B.L. standard will be regarded in the same light as a call to the bar is among the upper classes in England. Secondly, the standard of education differs in the several classes of society; what is special education for the poorest classes will be nothing more than ordinary education for the upper classes. Thirdly, so long as there is no means to compel a member of a family who has received

a special education either to earn or to save the Bombay rule must place a premium on idleness or extravagance. For instance, A and B are educated for the bar. A fails to qualify himself, but becomes a merchant. B qualifies and practises as a barrister. A's earnings would not be partible, but B's would be, though family funds had been equally expended in giving a special education to both of them. Again, if B accepted employment as a clerk in a public office, his earnings would not be partible according to the Bombay decisions; but if he rose to the position of a Judge, they would probably be partible. Neither A nor B could be called upon by the other members of the family to account for their earnings, and even if the family had any power to do so it would be altogether ineffectual, seeing that, owing to extension of facilities of communications, the earning members of families are now in many cases dispersed all over the Presidency and not confined, as in former times, to the immediate neighbourhood of their villages. Further, the rule that what is saved shall be liable to partition is tantamount to placing a premium on extravagance or concealment of property and leads to demoralization. Fourthly, the Bengal rule furnishes an intelligible and easily applied criterion for determining what shall be considered family property and what self-acquired property by declaring that, to make the earnings of a member fall within the former category, family funds should have been directly employed in their acquisition.

4. I fully approve, therefore, of the provisions of the Bill and beg strongly to urge on Government the necessity for passing it as early as possible. The settlement of the law by means of legislation will prevent much heartburning and dispute among the members of the family which the present state of the law gives rise to. What generally happens in Hindu families is this: so long as the earning member lives there is seldom any trouble; the other members look to him for protection and know that, if they put any pressure on him, it is open to him to separate himself from the family and thus cut off their supplies. When he separates himself of his own accord he generally makes, out of his self-acquisitions, provision for the other members to the extent of his means, though he does not feel bound to consider his cousins, nephews and other distant relations as being on the same footing as his own children whose interests have naturally the first claim on him. It is when he dies leaving a widow, more or less helpless, and young children, more especially girls, that the troubles commence leading to much fraud and waste of property. The proposed legislation will effectually put a stop to these evils and be of great benefit to the country.

5. There is one other question to be considered, namely, would the proposed legislation restrict the application of family funds to the special education of some of its members more than the present law does. I do not think that the application of family funds would be appreciably affected, more especially when it is remembered that it is open to a member of a family, after receiving a special education, to separate himself from the family, and that the law entirely leaves it to his sense of moral obligation to continue in the family and be of service to the other members in return to the benefits received by him. On the contrary, it seems to me that the proposed legislation would promote harmony and mutual good will among the several members and prevent the breaking up of joint families as long as it is convenient for them to live together. Often a member of a family who earns a large income may, out of regard for his parents and affection for his brothers and sisters, like to continue in the family and provide for their comfortable subsistence out of his earnings, provided he is not obliged to throw the whole of such earnings into the common fund, thereby beggaring his own children. When the choice is presented to him either of separating himself entirely from the family or of giving up all his self-acquisitions, it is not difficult to see what his decision would be and how detrimental that a law of this kind must in the long run be to the interests of the non-earning members of the family.

6. Lastly, I beg to state that no religious question whatever is involved in the proposed legislation and that there need be no misgivings on this score.

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From M.R.Ry. D. V. RAMAYYA PANTULU, Government Pleader, Ganjám, to the Under Secretary to Government, Legislative Department, dated Berhampore, 1st October 1892.

With reference to your letter No. 47, dated the 31st August last, forwarding to me a copy of the Hindu Gains of Learning Bill and its annexure and asking for my views thereon, I have the honour to state as follows:—

When the Bill was introduced into the Council in 1891, the Honourable Mover having sent to me a copy of the same, I studied it carefully and expressed my views in favour of the measure.

I have again studied it now, and it has confirmed my opinion in its favour.

My experience as a pleader during the last 22 years has convinced me of the great nicety and subtilty of the questions which arise in connection with this topic of Hindu law and of the necessity of a measure of this kind for the preservation of the peace and happiness of many a Hindu family.

The Bill is in consonance with the views of several of the text-writers on Hindu law, it is not at variance with the spirit of the judicial expositions of the law, and it is quite in accord with the present condition of Hindu society.

It is not open to the charges that are sometimes made against Bills of this kind, viz., that it is prospective legislation, that it is uncalled for, that it is opposed to the religious principles or feelings of the people, that it is a revolutionary measure, &c.

I wish and hope that the measure will soon become law and will be followed by similar simple measures on several other vexed questions of Hindu law whose glorious uncertainty is proverbial.

From M.R Ry. C. SURY AIYAR, Subordinate Judge of Cocanada, to the Under Secretary to Government, Legislative Department, dated Cocanada, 1st October 1892, No. 444-A.

I have the honour to submit herewith my opinion on the "Bill to declare Gains of Learning by a Hindu to be his separate property" as requested in your letter No. 47, dated 31st August 1892.

Enclosure.

Opinion on the Hindu Gains of Learning Bill.

1. The Bill deals with an important branch of the Hindu law. As observed by the Honourable Mover of the Bill, the law upon the subject is not free from uncertainty.

2. The system of the Hindu law which is administered by the Civil Courts is to be gathered from the books written many centuries ago in a language and phraseology that are unknown except to a select few Judges in the Mofussil generally depend upon translations which are in most cases found to be incomplete and not sufficiently lucid, and it affords them much relief to find a decision of the High Court on any points in controversy.

3. The authorities on the Hindu law are numerous and the annotations of the commentators and the opinions of the different text-writers sometimes make matters complex. For instance, in the Smriti Chandrika (section 1, chapter VII, Kristnaswamy Iyer Translation, 2nd edition), which is a work of special authority in this Presidency, the quotation from Vyasa, that wealth gained by science belongs to him that acquired it and shall not be claimed by the co-heirs, is followed by several rules laid down by Katyayana and others which so affect and contrast the plain meaning of Vyasa's rule of law as to leave the matter in ambiguity and uncertainty. Judges are often at a loss to decide upon the comparative efficacy as regards the views of different text-writers.

4. The decisions of the High Court, or rather the rules and principles recognized in them, are now mainly looked upon as the embodiment of the Hindu law. But in some instances it so happens that they are relaxed or modified in order to meet the justice of the varying cases that the courts had to deal with. Want of uniformity of decisions or the modification of an earlier interpretation of a rule of law has often been complained of.

In this state of case-law, it is not too much to say that any attempt to reduce any branch of the Hindu law to a degree of certainty deserves every encouragement.

5. That the legislature had already experimented upon legislating on certain topics of the Hindu law, when justice required such a course, may be seen from Act XXI of 1850 (Loss of Caste or change of Religion), Act XXV of 1856 (Widow Marriage) and other enactments.

6. Sir H. Cunningham, the late Advocate-General of this Presidency, had by the publication of his Digest of the Hindu Law, as administered here, demonstrated to some extent the possibility of codifying the same, and it can hardly be denied that the codification of the law confers a boon upon the community. The present Bill may serve us a step in that direction.

7. The principle and the scope of the Bill do no violence to the Hindu notions of property and are consonant to the spirit of the modern times. I do not doubt the wisdom of preserving to the people their own laws in matters of inheritance, adoption, marriage and religion. But modern education and modern culture are daily modifying the views of even the most orthodox Hindus on all these important questions. And a change proposed by the Bill will be really in accordance with the law laid down in the oldest Hindu law books.

8. Since the publication of the decision of the Privy Council in Pauliem *v.* Pauliem (Indian Law Report I, Mad., 252) the tendency of the judicial mind as to the self-acquired character of the gains of learning has been towards adopting the more liberal and certainly the more reasonable interpretation of the Bombay High Court in preference to the extreme view reiterated by Justice Holloway in D. Gangadharadu *v.* D. Narasanna (7 M.H.C.R., 47). Even in this latter case Kindersley, J., observed that there is a natural inclination in favour of such an interpretation of the law as would secure the fruits of a man's professional earnings for his own branch of the family.

9. The Bill proposes to put the gains of special or scientific learning on the same footing as those of ordinary education. This is going a step further than what has been recognized by the Bombay High Court, but the reasons assigned are cogent and satisfactory. And the benefits that are likely to accrue by the passing of the Bill into law are not overrated therein. The fairness of the proposed measure cannot reasonably be disputed by any section of the Hindu community. Nor does it tend to disturb any vested rights of property, because, however liberal an education a member might have received at the expense and to the detriment of the family property, there is nothing to prevent him from effecting a division the moment he begins to acquire the fruits of his learning and thus deprive his co-parceners of any share therein.

10. Though the Hindu law favours partition, the average Hindu will not generally adopt the processes necessary to effect a complete partition for reasons too numerous to be detailed here, but will be tempted to resort to the *benami* and other devices in order to secure the fruits of his learning to his branch of the family, which eventually result in ruinous litigation.

11. The remedies of the personal creditors of a member of a joint Hindu family are now more difficult and attended with grater risks than they were hitherto supposed to be. In Venkatarama *v.* Meera Lebai (Indian Law Report 13, Mad., 275) a Division Bench of the Madras High Court held that a purchaser from a member of an undivided family of that member's share in a specific portion of the family property cannot sue for partition of that portion alone and obtain an allotment to himself, but must seek partition of the whole family property; and a Full Bench of the same Court has recently held (Indian Law Report 14, Mad., 408) that the share to be awarded to him should be computed with referenee to the state of the joint family *at the date of the suit*.

12. A statutory declaration to the effect that the gains of education of a member of the family are his exclusive property will considerably raise his credit and status in public estimation and will in the long run tend to stimulate the exertions of the other members of the family. And it will also calculate to put an end to unseemly family quarrels and remove the extreme uncertainty in the present state of the law with regard to acquisitions made by a Hindu by means of his learning.

13. It will tend to foster independence and to develop individual resources and it will promote harmony and mutual goodwill among the members.

14. On the whole I am in favour of the Bill in question and I do not find any weighty objection to it.

From M.R.Ry. C. VENKOBACHARIAR, Subordinate Judge, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 15th October 1892, No. 1025.

In reply to your communication No. 47, dated 31st August 1892, I beg to state that I see no urgent necessity for the proposed legislation. It does not appear from the papers that I have been able to read on the subject that any representation was made to His Excellency's Council invoking interference by legislature. The supposed uncertainty in the law as to "gains of learning" is not peculiar to that branch of Hindu law. There are many other points both of Hindu law and other branches

of law and jurisprudence which may not be set to have been free from uncertainty. In my humble opinion the proposed Bill may, as a part of the general law codifying the Hindu law, which codification, if it at all takes place under the auspices of legislature, may be a desirable measure in a modified form for general legislation. But at present the great uncertainty spoken to by the Honourable Mover of the Bill is not such as, in my opinion, to call for legislative interference.

2. The Smritis in the way in which they have been written clearly lay down the law on this point, though with slight variations here and there. It is in the interpretation of the texts that difficulty has been felt, and it may be said that it has not been unanimous. But so far as it has received attention at the hands of Judges, it seems to have been pretty clearly settled what acquisitions are those which the acquirer can claim exclusively to himself, and what he cannot. Viewed in this light also there seems to be no necessity for legislation on this point at present.

3. The Bill may possibly affect, or, when passed into law, may be given effect to by a few persons who might wish to avail themselves of its provisions. But what is aimed at by the Bill is likely, in my opinion, to introduce changes in a Hindu family which might produce serious and unpleasant results. Apart from those cases in which fathers and brothers of refined culture and feeling, who might educate their sons and brothers from disinterested motives and from a sense of duty, there are many instances in which poor fathers encumber their little property for educating their sons in the hope of bettering the condition of the family. What is to be the lot of the father, whose son discards him on the strength of the proposed Bill as soon as he begins to earn money? No doubt the father was bound to impart elementary education, but he was not bound to spend his little fortune in bringing up his son. Each man may have his own views as to what elementary education is. If mere rudiments are taught, such as are taught in a pial school, they may cost very little or nothing. Now the cost of education has greatly increased and the education up to B.A. is, I understand, ordinarily known as general education. I am told that it costs at the lowest a 1,000 rupees to educate up to the B.A. degree. If this is so, it is fair to suppose that, when a member of a family incurs any outlay in imparting education to a junior member anything more than indigenous education, he expected to be reimbursed by the member who is benefited by that education. I may quote the very apt instance of a member being sent to England for studying for the Civil Service or the Bar, given by Mr. Mayne in his Hindu Law, 4th edition, paragraph 259.

4. Take the following case as an illustration. In a family of four brothers, of whom three were given good English education at the family cost and one a rudimentary education, and he being left in charge of family estates consisting of, say, 250 or 300 acres of lands, wet and dry. Suppose the three educated brothers were employed in different places in different walks of life, each earning some handsome emoluments. These brothers can claim their acquisitions exclusively to themselves and also a share in the acquisitions made by the brother in charge of family estate by his own skill and industry. The measure will tend, I apprehend, to this result, namely, that there will be no incentive to give tolerably good education to junior members so as to fit them for employment in the ordinary walks of life. A selfish person will always act according to his own nature, and there may be some who are ill-natured to advance special rights and disturb the family peace, but, on the whole, the state of society, as at present constituted, does not, I respectfully submit, warrant the introduction of this measure.

5. Policy and the progressive state of society may no doubt be brought in as causes necessitating this measure. I cannot see that the progress of society has been retarded by its absence. The matters put in the speech of the Honourable Member as tending to induce the earning member to take himself off from the joint family are not, I think, of much force. There is the belief still in the strong family ties, and it is believed that when a member consumes family money for his use, he will, when he earns, support those who do not earn or are incapable of earning. The result of this measure will, I humbly think, tend to disturb this equanimity and good feeling.

From M.R.Ry. Rai Bahadur V. JAGANNADHA ROW, PANTULU GARU, Deputy Collector in charge of Treasury, Gódávari, to the Under Secretary to Government, Legislative Department, dated Cocanada, 17th October 1892, No. 2570.

I have the honour to acknowledge receipt of your letter, dated the 31st August last, No. 47, and its accompaniments relative to the Gains of Learning Bill, and beg to submit the following remarks thereon.

2. I beg to premise that the principle, scope and objects of the Bill have my hearty sympathy and unqualified approval.

3. The Honourable Mover of the Bill has so ably and correctly expounded the present state of law in the matter that I deem it hardly worthwhile to quote any more authorities bearing on the subject. I may, however, add that even the orthodox portion of the Hindu community living in these parts does not, so far as I have been able to gauge its feeling, look upon the Bill with disfavour.

4. The distinction between "technical or scientific education" and "elementary or liberal education" has, I think, been very properly abrogated in the Bill. It is difficult to draw a precise line of demarcation between the two. What might be regarded as special education at one time may form part of the general education at another. A comparison between the old and present curricula of our Indian colleges and schools will show this beyond all doubt.

5. The present uncertainty of law has a tendency to induce the member of a Hindu family to seek for a division or to conceal his earnings and invest them *benami*, while otherwise he may be willing to leave the ancestral property intact for the common benefit and honour of the family. I am aware of numerous cases of this nature.

6. The proposed legislation is doubtless calculated to harmonize the Hindu law with the conditions and requirements of modern Hindu society, and the Honourable Mover of the Bill has not certainly over-estimated the benefits which are likely to result from it. In my humble opinion it is likely to engender and promote habits of thrift and self-reliance upon *that* idle and non-productive portion of the Hindu community which, as but a canker or parasite is now eating up and deteriorating the vital and self-subsisting portion of it; to bring in peace and good feeling among members of a family in the place of mutual distrust and jealousy; to obviate the necessity for a variety of *benami* transactions calculated to keep the self-earnings out of the hotchpotch; and to remove thus one of the sore causes of misunderstandings and litigation among the kith and kin otherwise dear and near to one another.

7. The objection raised by several critics to the effect that this Bill, if passed into law in its present form, might deter managing members of Hindu families from securing the benefits of scientific or liberal education to the junior members at the expense of the family funds is more sentimental than probable. In the present state of the Hindu society, there is no reason to apprehend such a catastrophe. It is not mere mercenary motives that induce the managing members of families to provide for the education of the junior members at present. It is either feelings of genuine affection and love of public approbation or fear of reprobation by the community that induce them to do so. The suggestion, therefore, that the recipient of the education should be placed under a legal obligation to recoup the family funds does not commend itself to me.

8. Whether this is a Bill which can properly be introduced before the local Legislative Council is a question which admits of some doubt. The issues involved are more imperial than local, but I assume that the point received due consideration when permission to introduce the Bill was given to the Hon. V. Bhashyam Iyengar. Presumably this Bill is not on all fours in its nature with the Kanyasulkam Bill which was thrown out some time back as beyond the scope of the local legislature.

From M.R.Ry. R. SUBRAMANYAM AIYAR, Registrar of Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Tinnevelly, 18th October 1892.

With reference to your letter No. 47 of the 31st August last, I beg to inform you that I have this day despatched by book-post a memorandum containing my views on the Hindu Gains of Learning Bill.

Enclosure.

Memorandum on the Hindu Gains of Learning Bill.

As the Bill is an attempt to codify one of the several branches of Hindu law, the same will have to be based on original Hindu texts and commentaries, on the modern decisions of Courts and on custom, if any.

2. Before examining the Bill with reference to the aforesaid points, it may be said that in some respects the Bill is commendable, as it secures to the acquirer the gains of his learning and an absolute right of disposition over such gains. In some cases it may prevent unnecessary litigation for untimely partition and keep the family in a state of union. It may also stimulate industry and enterprise in other members of the family who, under the present state of the law, have a right to depend on the earning member for their support. It removes uncertainty of decisions in future litigation concerning the matter and sets at rest one of the vexed questions of Hindu law. It also procures to the acquirer the satisfaction of enjoying the fruits of his own labour without any of the restrictions of an undivided Hindu family. It remedies the hardship under the existing law that persons who acquired their education or training very often in trying circumstances may feel in having to part with the wealth they may acquire in the exercise of any calling or avocation in life to the drones of the family. No doubt it is extremely vexatious for the earning member to part with what he acquired by his own labour. These are considerations of policy and expediency.

3. Notwithstanding all this there are certain other legal and equitable considerations which make the passing of the Bill, as it at present stands, not quite desirable. In this case one may be safely guided by the original texts and commentaries on Hindu law and modern decisions.

4. With reference to the former, the first two of the marginally-noted texts are very clear on the point and lay down the rule that what a man acquires by means of his learning *at the family expense* are divisible among all members. The other two of the marginally noted seem to be not so clear at the first sight, but when properly construed clearly point to the same conclusion.

(1) Katyayana as quoted in Mitakshara, chapter I, section IV, verse 8.
(2) Narada as quoted in chapter IV, section I, verses 14 and 16.
(3) Manu as quoted in chapter I, section IV, verse 10, and as quoted in Dhayabhaga, chapter VI, section I, verse 3.
(4) Vyasa-Dhayabagha, chapter VI, section I, verses 4 and 14.

5. But sometimes the meaning of original texts is obscure and the original treatises on Hindu law bearing on the texts and expounding the law are always accepted as safe guides and acted upon by Courts.

6. Mitakshara, Dhayabagha and Vyavahara Mayuka among others, which are original treatises expounding the Hindu law, are very important.

Mitakshara, the most important treatise on the law of inheritance and partition, being a commentary by Vignaneswara on the Yagnavalkia Smrithi, is accepted as the leading authority on Hindu law in Southern India. The subject of this Bill is very fully discussed in this in chapter I, section IV. It clearly lays down that what a man gains by learning by using family funds is divisible among other members.

Dhayabagha, a treatise on inheritance by Jimuta Vahana, is accepted as the leading authority on Hindu law in Bengal. The question is elaborately discussed in chapter VI, section I, verses 4, 14, 16, 19 and 46 to 52. While agreeing with Mitakshara in general principles, it makes a distinction between gains of learning imparted at a special cost for a special training and those acquired by a person to whom only an ordinary maintenance and rudimentary and general education were given, making the former divisible and the latter indivisible.

In Vyavahara Mayuka, a leading Hindu law treatise by Nilakanta Batta, the subject is treated at great length. It fully agrees with Mitakshara in declaring that what a man earns by learning imparted at the expense of patrimony is divisible among all members—*vide* chapter IV, section 7, verses 1 to 14.

7. As for decisions: It may safely be said that there is not a single decision going to the full extent of the Bill that gains of learning under all circumstances are indivisible. The spirit of the decisions seems to be that the gains of learning imparted at a special cost of the family for a special occupation, making it the immediate source of gain, is partible, and those

acquired by a person who received only an ordinary education at the family expense is indivisible. The Privy Council has not yet expressly decided the point. In addition to the various cases cited in the Statement of Objects and Reasons, the marginally-noted cases may also be noticed. In the first case it was held that "where the property descended is *incapable* of being considered as the germ whose improvement has constituted the wealth subsequently possessed, this wealth must equitably be deemed self-acquired."

(1) Guruchurn *versus* Goloockmoney cited in Mayne's Hindu Law, paragraph 261.
(2) Chellaperumal *versus* Veeraperumal, 4, Madras Jurist, page 54, cited in Mayne's Hindu Law, paragraph 259.

In the second case it was laid down that when a Hindu made a large mercantile fortune, his claim to hold it as self-acquired was good, though he was maintained in his earlier years, educated and married out of patrimonial means.

Of course the education in this case is only an ordinary one.

8. So the question will have to be decided with reference to the nature and extent of education and of the funds used as the facts present themselves in each particular case. Some occasional difficulty in ascertaining the facts may not be sufficient to alter the law. The Bill seems neither in accordance with the original Hindu law texts and commentaries nor with the decisions in reported cases. The Bill is a distinct advance on the present state of the law, and however salutary its effects may be on some persons, it is difficult to see that at the present state of Hindu society the distressing uncertainty of the law complained of in the speech of the Honourable Mover is sufficiently felt as a hardship so as to require special legislation. The following difficulties are felt by many persons as real.

9. If the Bill is passed into law it may probably interfere with the promotion of higher education among the members of the Hindu family, since no one member will allow a proportionately large outlay from the family funds in favour of one of the members for *no benefit* to others.

10. Instead of retarding division among the members, it may rather expedite it, so that the cost of educating a particular member may be defrayed out of his share. The elder members may lose their interest in getting their younger brothers educated in the higher branches of education. If the share of a particular intelligent member is not sufficient for his education, the promising youth finds himself cut off from his future prospects.

11. This Bill may further lead to the result of altering the existing Hindu law of self-acquisition from other sources. If the gains of learning imparted at the cost of the family is made to be indivisible, the same rule will, in justice and equity, have to be applied to other cases of self-acquisiton by other members who use the family funds in their avocations, for instance, trade, farming, &c., and it is difficult to draw the line between gains made by learning and by other means. A Bill dealing with a branch of self-acquisition leaving the other branches of the same untouched is not very clear.

12 There are other branches of Hindu law about which the texts and decisions are conflicting—the law of adoption, stridhanam, bhandu relationship, gifts, wills, benami transactions, &c. Mere hardship to particular members and difficulty of decision may not justify to legislate on these points.

13. Lastly, it may be a question whether it is advisable by means of legislative enactment to alter the existing Hindu law by which the Hindus have been till now governed, or whether it may not be safe to leave it to be administered by our eminent Judges according to the facts of each case.

If the legislature should think the former necessary and expedient, some provision in the Bill ought surely to be made for compensating the other members of the family for the outlay from the family funds made for the purpose of educating the earning member.

Tinnevelly,
18*th October* 1892.

(Signed) P. SUBRAMANIYEM AIYAR.

From M.R.Ry. S. SUBRAMANIEM AIYAR, Dewan Bahadur, to the Under Secretary to Government, Legislative Department, dated Madras, 18th October 1892.

With reference to your No. 47, dated 31st August 1892, I have the honour to state that I am in favour of legislation on the lines suggested by the Honourable V. Bhashyam Iyengar. I entirely approve of the principle of the Bill introduced by him.

From M.R.Ry. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, to the Under Secretary to Government, Legislative Department, dated Ellore, 19th October 1892.

With reference to your demi-official No. 47, dated 31st August 1892, I beg to enclose a note showing as briefly as possible my views on the Bill therein enclosed.

Enclosure.

Note by M.R.Ry. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, dated Ellore, 18th October 1892.

This Bill aims at removing the uncertainty of the law of "Vidyathanam" or "learning money." According to Katyana, "Vidyathanam" is that which has been acquired after instruction received from a stranger and a maintenance provided by one of a different family. It is partible if the education has been imparted by a member of the family or at the expense of the family funds, whatever may be the nature of education received. The Madras High Court first adopted this principle and in subsequent cases drew some distinction between ordinary and scientific education.

2. But what was scientific education in one may be considered ordinary in another age particularly of progress and civilization, and the law will continue to be uncertain unless the education is defined. Of course, the Bill is opposed to the spirit of the law as propounded by Katyana and other commentators, but it is one well adapted to the condition of modern society. Even under the existing law one can claim his share and thereby come to a division when he thinks he can earn more. The other members cannot object to the division whatever be the aid the claimant has received from the family funds for his education.

3. But a Hindu who knows that he is earning more than his brothers is generally averse to partition, not out of any love to them but for fear of being called selfish. He therefore continues undivided and is at the same time reluctant to allow the other members equal or any share in his acquisitions, while the latter who are perhaps idle and do not work to support themselves or to improve the family resources think that they are entitled to an equal share with the acquirer and often press their claims to his annoyance. To get over this difficulty some are indifferent to even their own interests and do not work. Some conceal their property and secure it in other names. The Bill will not only remove the temptation for such frauds, but will also wake up the idlers who claim shares in property acquired by a hard-working member.

4. It may perhaps be said that the education of the junior members in a family would be neglected as a consequence of this law. In a well-to-do family the father does not generally expect a return from the son whom he educates at the expense of the family funds purely from a sense of duty. If he spends more for one than for another son, it is because he finds a fitting material in the former.

5. I do not think that the Bill would make any difference also in cases in which one of the brothers happens to manage the family affairs. As stated above there is nothing in the existing law to prevent his asking for division of property if he prefers it. In all such cases the family has to rely more upon the affection, gratitude and good sense of the earning member than upon any legal right created in the others. If the Bill be passed, there will be no misunderstandings, each member knowing exactly his own position. There will be a stimulus for self-exertion and harmony in the family which may continue undivided for longer periods than at present. Then there will be the strength of the joint family without its present drawbacks.

Demi-official from the Hon. P. CHENTSAL RAO, to the Under Secretary to Government, Legislative Department, dated Bangalore, 20th October 1892.

With reference to your letter, dated 31st August 1892, No. 47, I beg to submit the following observations on the Bill introduced by the Honourable Mr. Bhashyam Iyengar on the subject of gains of learning.

2. I consider that in dealing with this subject one should be guided by the opinions and inclinations of the Hindu public at large whose interest this Bill is likely to affect, and not by European notions of the fitness of things nor by the opinions of the small minority of Hindus who have come under the influence of European culture and ideas. If it were a question of the abolition of inhuman practices such as suttee or infanticide, we are certainly not bound to respect the superstitions of an unreasoning majority; but where, as in this case, we attempt to legislate in regard to rights to property and the existing methods of distribution thereof, we should certainly

not be justified in disturbing the Hindu customary law on the subject without a strong concensus of popular opinion in favour of a change. These rights and these methods of distribution have grown out of family affections and tendencies to hold together which are far from being inhuman or immoral. I would therefore suggest the appointment of a commission for ascertaining the opinion of the public in the matter.

3. I have discussed the subject with several disinterested intelligent and orthodox Hindus and I find that they are generally against the law proposed by the Honourable Mr. Bhashyam Iyengar. They consider that the view held by the Privy Council and the consequent subsequent decisions of the Bombay and Madras High Courts are opposed to the Hindu law and they are also unable to appreciate the justice and equity of declaring the gains of learning as separate property of the acquirer when such learning has been acquired at the expense of the family. I pointed out to them the inutility of declaring gains of learning divisible when it is within the power of the acquirer to make them his own by the mere exercise of his option to force a division, and the characteristic answer I received from an orthodox pandit was that if a person who receives education at the expense of the family proves so ungrateful as to force a division immediately he commences to acquire money, why then he would resign himself to his fate, but regard the ingrate as dead to the family. This contingency, however, he contended was no reason why the Legislature should step in to make things smooth and easy for the ungrateful deserter. The above remark is within my experience merely illustrative of the feelings entertained by the people in this matter, and I know for a fact that in Southern India the breaking up of a coparcenary by one of the members who is able to acquire money to the detriment of the others who are as yet unable to stand on their own legs is regarded by the society as highly reprehensible, and this dread of popular reproach has in many cases either deterred the earning member of the family from forcing a partition till the others are fairly in the way of earning for themselves or has induced him to give up portions of his share in the patrimony to his less fortunate brethren. Thus, the existing practice under which the gains of learning are divisible when the learning was acquired with the aid of the family funds is not without some practical advantage to the poorer and more ignorant members of the family whose ignorance, however, is in very many cases due merely to the fact that the slender resources of the family could not meet the expense of educating more than one member thereof. The advantages to the poorer members above pointed out would be lost should Mr. Bhashyam Iyengar's Bill become law.

4. Coming to the Hindu law on the subject as laid down in the texts and interpreting them, not according to the European method of construing a passage by the plain meaning of the words, but by the Hindu method whereby the meaning of the text is made to conform to approved usage and corresponding texts of other text writers of authority, I can come to only one conclusion, viz., that *all* property acquired by members of a joint family by means of learning is divisible unless that learning is of a special kind and acquired without the use of family funds. This is also the view of the Mitakshara which is the paramount authority in Southern India on matters of inheritance, and it is certainly the law which exists in the consciousness of the people and is approved by their conscience. The author of Mitakshara goes to the extent of holding that even absolute gifts obtained by a coparcener *without detriment to the family property* are by law and usage common property thereby enforcing his position that it is only gains specifically excepted by the texts and acquired by extraordinary exertion of individual energy that do not go into the common stock. In fact Vignaneswara thought, and following him Hindus generally think, that divisibility attaches as a rule to all gains acquired by every member of a joint family, non-divisibility being the exception in certain specified cases, one of these latter being the gains of learning acquired without the aid of family property.

5. Such unquestionably being the Hindu law on the subject, we have next to consider whether the provisions of the Bill are equitable and there is any particular social advantage to be gained by altering the law in the manner suggested.

6. I cannot say that the law proposed is equitable. If in a joint family consisting of four brothers, A, B, C, D, A works on the family farm, B employs himself in trading, C practices in the Court and earns money and D looks after domestic

management, the most equitable arrangement would be to treat all the earnings as the common property of all the four and not to exempt the earnings of C alone from division. It may be that all the other members had the use of the family capital, while C used his brains alone, but so long as they choose to remain undivided, I do not see how C can equitably claim his earnings to himself and yet claim a share in the entire earnings of the rest.

7. Nor does it appear to me that the declaration that gains of learning are indivisible is a decided social advantage. If on the one hand it induces the acquirer to exert himself better, it has on the other hand a tendency to make the other members of the joint family less contented and less industrious. For instance, in the case mentioned in the preceding paragraph, it would certainly deter A, B, and D from putting forth the same amount of energy as they would if they had a share in the earnings of C.

8. It cannot also be said that under the law proposed litigation would diminish and suits for division would become less. Mr. Bhashyam Iyengar's law may render it unnecessary for C to go to Court for a division, but it is sure to encourage the other brothers to go to Court.

9. The only advantage of the Bill is that it will to some extent effectively check the spread of demoralization. It will surely make it unnecessary for C, the acquirer of money by learning, to conceal his acquisitions, or to enter into fictitious *benami* transactions to save them from division, but here we must pause and consider whether *benami* transactions in the case of such earnings are looked upon by the public as an excusable means of evading the rigours of an unjust law or as improper and dishonourable. If the former be the case, the law must be altered, and if the latter be the case the remedy should be, not the declaration that gains of learnings should be regarded as self-acquired property, but a declaration that such *benami* transactions are punishable offences. Of course a great deal of falsehood would cease if official corruption is legalised, but no one would recommend it on that ground. So far as I know *benami* transactions are considered by the public as dishonourable even when they take place in connection with one's own earnings, and therefore if they are to be discouraged it must be by some means other than of declaring the gains of learning by a member of a joint family indivisible.

10. It may be urged that on the whole the advantages of declaring the earnings accruing from one's own exertions as self-acquired property preponderate as a motive for exertion. If so, and I have no doubt it is so, our law must have much larger scope than that proposed by the Hon. Mr. Bhashyam Iyengar. We will have to declare *all* gains due to *personal exertion* whether with or without the aid of the family property impartible. For instance, in the case mentioned in paragraph 6 *supra*, not only should C be entitled to all his earnings but also A, B, and D to the *increased* earnings and savings due to their industry and skill. But I know that such sweeping legislation is beset with endless difficulties and cannot at present be undertaken with any chance of success.

11. All circumstances considered therefore, I think that in the present condition of Hindu society and the feelings of the people as regards personal acquisitions if any legislation is needed at all to remove uncertainty, it is in the direction of declaring the gains of learning divisible when the learning has been acquired at the expense of the family property. If such a law would induce people to separate from joint families more largely than they do at present, nothing can be more desirable. I consider that the joint family system is a clog to enterprise, a damper to self-exertion and the curse of India and the sooner it ends the better for the country.

Demi-official from A. RAMACHANDRA AIYAR, to the Under Secretary to Government, Legislative Department, dated Bangalore, 25th October 1892.

With reference to your letter No. 47, dated 31st August 1892, I beg to forward my views on the Bill introduced by the Hon. V. Bhashyam Iyengar.

Enclosure.

The Bill meets with my approval, as I am inclined to think that it is in conformity with the usages of the people. If a man who has been educated at the expense of the family earns property, the earnings are treated as his own. If he gives any property to his brothers, it is received with professions of gratitude, and if he divides his property equally or almost equally with them, or if he treats his children and their children alike, he is praised by the public for his generosity and filial affection. If his brothers stand in need of assistance, they do not claim anything as a matter of right. When I make these remarks I have in my mind about two dozen earning members who are natives of Madras, Tanjore, Tinnevelly, Coimbatore and South Malabar. These cases indicate that in the opinion of the people a man is absolute master of what he earns and that it makes no difference whether he received his education wholly or partially at the expense of his family or what was the character and quality of his education.

2. Although there is some difficulty in reconciling the texts as to the exact signification of the expression "gains of learning," it seems to me that the law left the acquisitions of an educated man entirely at his disposal. If it was otherwise, the Hindu law of partition or division would have contained a provision preventing an earning member who was educated at the expense of his family from claiming a partition at his pleasure, or the law would have enabled a Court to decree a share of his prospective earnings for the benefit of his less fortunate brothers.

3. It has been urged by some men that a father spends all his property upon the education of one son in the hope that the latter will prove a father to his brothers, that the Bill will defeat his just hopes and expectations, and that such instances are numerous. The father and other sons have no legal hold upon the earning member as is evident from the fact that the law gives him power to separate himself from them at any time. If he does not exercise that power, if he maintains his brothers and even shares his property with them, it is by reason of his natural love and affection. Again, non-division is the normal condition of Hindu families and one does not willingly act contrary to the law and usages of his people. If a man separates himself when he is able to stand on his own legs and when his father and brothers need his assistance, it is base ingratitude and selfishness and public opinion will point the finger of scorn at him. It is these moral considerations that impel an educated man to act considerately and even generously towards his father and brothers and other members of his family, and I see no reason to fear that if the Bill is passed these considerations will cease to exercise their legitimate influence.

4. The law being somewhat unsettled by decisions, I think that the point should be set at rest by the Legislature. A Bill which is in conformity with the Hindu law or at all events with the law as understood and acted upon by the people, ought not to be open to any objection.

(Signed) A. RAMACHANDRA AIYAR.

From M.R.Ry. C. GOPALAN NAIR Avargal, Sub-Judge of North Malabar, to the Under Secretary to Government, Legislative Department, dated Tellicherry, 26th October 1892.

I have the honour to acknowledge your letter No. 47, dated the 31st August 1892, sending me a copy of "a Bill to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council, and to state, in reply, that I am a strong supporter of this Bill. The principle embodied therein has always been accepted as customary law among Marumakkatayam and Aliyasantanam people in the districts of Malabar and South Canara, and in all my judicial experience of over 24 years in these districts, I have never known a single case among them in which any acquisitions made by one member of a family by means of learning were ever claimed by its *karanavan*, *ejaman* or other members as belonging to the common estate by reason of his being educated with the funds of such family. Even among other Hindus in these districts and elsewhere, it seems to me that no doubts would have arisen but for a few decisions based on obsolete texts of Hindu law which themselves had their origin at a time when the patriarchal system was in its ascendency and when the existence of private property and the right of division among coparceners were almost unknown among Hindus, and I need scarcely add that all such views have disappeared even with orthodox Hindus of rigid conservative views in the present state of society.

2. I have no fears that the fathers or other managers of families would ever neglect the education of their sons or other members merely because the effect of such a law would make the earnings made by such education the separate property of the acquirer, and it appears to me highly desirable that all doubts on this part of the law should be removed by a legislative enactment on the lines of the present Bill.

3. With reference to paragraph 3 of the Statement of Objects and Reasons, I would respectfully suggest that the provisions of this Bill should also be made applicable to Mussulmans or Moplahs who follow the Marumakkatayam or Aliyasantanam law of inheritance, as they are subject to all the incidents of Hindu families following the same law in the matter of the acquisition, enjoyment and devolution of properties.

From C. RAMACHENDRIER, Esq., District Judge, Nellore, to the Under Secretary to Government, Legislative Department, dated Nellore, 2nd November 1892, No. 661 Civil.

With reference to the letter, dated 31st August 1892, No. 47 (Legislative Department), I have the honour to submit the following report:—

1. The Bill proposes to enact that all gains of learning shall be considered the self-acquisition of the acquirer with a view to bring harmony and good feeling in Hindu families.

2. The mover of the Bill, on referring to the texts of Smirithi writers, the decisions of the High Courts and the Privy Council, concludes that time has come for legislative interference, as he apprehends that the law is vague at present, that it is capable of mischievous consequences, and that the law should be altered by Legislature in accordance with the modern notions of right and wrong.

3. The Hindu law affects not merely the social law of the Hindus, but it is a part and parcel of their religious institution, and consequently the Government have not accepted the suggestions from different quarters to codify the Hindu law.

4. It is contended that the early text writers were in favour of classing all gains of learning as self-acquisitions, and the narrow views subsequently advocated is due to the gloss of the commentators. This reasoning is not acceptable; for otherwise it would follow that we are at liberty to give up the commentators and follow our own interpretation of the earlier texts. If this were so, we should be asked next to give up the law of the Mitakshara to follow fanciful interpretations of the texts of Yajnavalkya.

5. The second ground of the mover is that decisions are vague. There is nothing uncertain or vague in the decisions of the High Courts. The law is certainly clear that all gains of learning is partible if the learning has been acquired at the expense of family funds or where receiving a family maintenance. Of course the *obiter dictum* of the Privy Council might inculcate a different view, but it seems certain that if the full texts were before them they might have come to a different conclusion altogether. But because the views of the Privy Council are somewhat vague is no reason for legislative assistance. If this were so, in every case in which the law as laid down by the highest tribunal is vague or does not meet the requirements of all, the aid of the Legislature would have to be invoked. The other day the Madras High Court decided that a re-married Brahmin widow and her husband are not entitled to go into the inner shrine of the temple. The re-married couple are still Brahmins and why the Legislature should not interfere and pass a short enactment declaring their right to go into the inner shrine on the ground that the decision has the effect of impeding reform and progress.

6. I do not see what enables the mover of the Bill to think that the present law encourages fraud or concealment or gives occasions for benami transactions. Fraud, &c., are due to various causes, and it is not right to say that such transactions exist in a large measure in the case of persons who are able to earn largely owing to their being endowed with learning and consequently high mental culture and endowed with valour or skill.

7. If this piecemeal interference was once granted, then, of course, a death-blow must be given to the present administration of Hindu law.

(*a*) Why should a Hindu widow's powers of alienation be curtailed at the instance of a dayadi of the sixth degree?

(*b*) Why should a Hindu widow's right to retain possession of her husband's property cease with her re-marriage, which law has the effect of discouraging morality and encouraging prostitution?

(*c*) Why should a lady just this minute in full possession of all the property with her husband be driven the next moment to sue for maintenance, because the husband happened to die a few minutes earlier perhaps than other coparceners of the same family? If the law declared a married woman entitled even in undivided families to possession of her husband's share during her lifetime, it would be very wholesome and would obviate the miseries of widows.

If all these be matters on which Hindu law is at variance with our modern notions of equity and justice, why should one portion alone of Hindu law be altered by legislation? Why not abolish Hindu law altogether and substitute instead the Indian Succession Act or some other enactments based on no sound principles or customs?

8. Far from promoting harmony and good feeling in Hindu families, the Bill will of course create a good deal of heart-burning where previously it did not exist.

9. The obvious objections to the Bill may be stated as follows:—

(i) It makes a distinction between the gains of learning and gains from trade and other sources and gives all the advantage to the former. It is obvious that a large amount is spent on the education of a Hindu youth. If this money had been spent by another member of the joint family on trade, the whole of his acquisitions become partible, and it is unjust that where there has been expenditure incurred from family funds, one person alone should reap the benefit derived therefrom to the exclusion of the rest.

(ii) In a family possessing a large landed estate and consisting of five members, one receives a liberal education. The other four spend their time and energy in improving the landed property and earning large profits from their personal exertion in improving the land and effecting a saving. The man of learning would be entitled to all the savings earned by the life blood of those four, while he would be entitled to keep for himself his whole earnings. Such a state of things is unjust in the extreme.

From M.R.Ry. V. RAJAGOPALA CHARIAR Avargal, Treasury Deputy Collector, Malabar, to the Under Secretary to Government, Legislative Department, dated Calicut, 3rd November 1892, No. 582.

In acknowledging with many thanks the receipt of your letter No. 47, dated 31st August 1892, I beg to submit herewith a memorandum of my views on the Bill "to declare gains of learning by a Hindu to be his separate property" framed by the Hon. V. Bhashyam Iyengar. I beg to be excused for the delay in sending the same.

Enclosure.

The Bill under consideration aims at codifying a portion of the Hindu law and as such has much to commend it. It proposes to deal with what is termed "Vidyathanam" or gains of science and to declare that property acquired by a member of a Hindu family substantially by learning shall be his exclusive and separate property irrespective of the method and means by which he is educated and the person who educated him. The Honourable Mover of the Bill has clearly and fully explained in his Statement of Objects and Reasons the original texts bearing on the subject, the subsequent gloss of commentators and the still later expositions of the law by British Courts of Justice and has described impressively the inapplicability of the law even as enunciated by recent decisions. The simpler and clearer the law, the better and easier it is to the community and the Judges who are to follow and administer it. The proposed Bill has certainly the advantage of simplicity and steers clear of all fanciful distinctions. It is also easy of application.

2. If the principle underlying its provisions should be an innovation, the ingrafting of a foreign element on the indigenous law of the land which Government has bound itself to administer, then indeed one should pause and consider before adopting it. The idea of separate property is not foreign to Hindu law, and "gains of learning" as separate property subject to certain restrictions were apparently recognized by the earliest Smirithi writers. What is now

proposed to be done is to adapt the Hindu law texts to the present state of society by defining the term "gains of science" so as to be more comprehensive. In early times when the several members of a family lived jointly under the control of one head member, whether under the patriarchal or the joint family system and were mostly tillers of soil, there could not have been much scope for self-acquisition nor in consequence any necessity to frame rules to regulate the rights of individual members to it. Partition too must then have been unknown. The present condition of Hindu society is far different. Population has increased and the land available for cultivation is in consequence more restricted. With the advent of the British and the spread of western civilization now wants have sprung up and various fresh walks of life and vocations have been opened out. We find around us a hot race and a keen competitions after the worlds best effects in the various pursuits and callings of life. Such being the case it is no longer possible to adhere to the old principle of community of goods, especially that kind of indiscriminate community where the whole belongs to each and every member of a joint family. It is therefore but apt that legislation should provide for securing individual rights in a manner consistent with the change in the times. The legal recognition of separate property will be an incentive to individual exertion and will be productive of substantial good to the community in general.

3. The provisions of the Bill will decidedly be acceptable to the educated portion of the Hindu community; for it is the educated members of a family who are able to acquire separate property and the Bill secures their rights to their self-earnings as against the others. If in the class of educated may be included all those who have had the benefit of "learning" in the comprehensive sense in which the term has been defined in the Bill, then they may be said also to form a major portion of the Hindu community. The Bill may not be acceptable to the now comparatively few idle members of Hindu joint families who without contributing anything themselves towards accession to the family fund profit at others expense, but it is a point for consideration whether this need weigh much with the Legislature in introducing a measure which it is satisfied is good by itself and is demanded by the exigencies of society as at present constituted.

4. Let me now proceed to the consideration of the objections it is possible to raise against the Bill. The first is that if it should become law, it would effect prejudicially education. The head of a joint Hindu family will not care, it might be argued, to educate the minor members when he sees that what they acquire by means of the education so imparted cannot be claimed either by himself or for the common benefit of the family but would go towards aggrandising the members educated individually and their personal heirs. In the first place we do not find as a rule large joint Hindu families comprising several members, such as brothers and cousins, uncles and nephews, in existence now. The tendency on the other hand is in the direction of families splitting up; several disintegrating forces are at work which bring about the dissolution of a joint family and the creation in its stead of many offshoots each with a narrower sphere where the family tie and affection is strong between its component parts. Instances are not uncommon of even sons dividing from their fathers when they grow up and begin to have a family of their own. Ordinarily a Hindu father does not educate his son in view to the prospective good which he hopes to obtain thereby. It is more his instinctive attachment to his son and the desire to see him launched well in life which act on him. As between his different sons if he should spend a larger amount in educating one in preference to another, it is a mere matter of accident depending as it does upon the peculiar aptitude of that son and such other similar circumstances. Further even granting for argument's sake that self-interest is the predominating factor, he knows full well that even at present it is in the power of his educated son to frustrate the object in view by demanding partition just at the nick of time when he begins to make any large acquisition. For these reasons the argument of education being retarded by the introduction of the measure has not much force in my opinion.

5. In Malabar, however, the joint family system prevails to a larger extent and the provisions of the Bill are to be held to apply to families governed by Marumakkatayam and Aliyasantanam systems of law. It is therefore worthwhile to consider what will be the effects of its introduction in that district in respect to education. Even under Marumakkatayam law the acquiring member can deprive the tarvad of the benefit of his self-acquisitions by disposing of them during his life and the tarvad can claim, as a matter of right, only the residue after his death. If the uncertainty of getting the self-acquisition of an educated member to the extent existing at present does not operate as a bar to karanavan's educating the junior members, it seems doubtful whether the consciousness of having no right to it after his death will prove to be any very great obstacle. It appears further that in many cases it is the father, when he is a man of means, who educates the son and not the karanavan of the tarvad, of which the son is the member. The father does not now do so with a view to any prospective benefit either to himself or his family, and the Bill will not therefore affect his endeavours in that direction prejudicially. There is this additional advantage in the present Bill becoming the law that the craving of the educated portion of Malabar as evinced in another Bill now before Government for the legislation of their marriages and the recognition of individual right to self-acquisition so as to devolve the same on their personal heirs would be partly met and satisfied even though there should be any difficulty in getting the other passed by reason of its aiming at a change in the very constitution of the society.

6. Another objection which might be taken to the Bill is that though it is all well and good from the standpoint of an acquiring member, its provisions are not fair as against the person who educated him and placed him in a position to acquire. Let me for the purpose of illustration take an extreme case, say, of a father who possessed very little means divests himself of all that he could share in giving his son a high English education. Let me also suppose that the son becomes successful in life but turns out his father adrift at a time when he is not in a position to support himself. As the law stands at present the father and son are undivided members, the education has been imparted at the father's expense and the father can claim, as a matter of right, a share in the self-acquisition of his son. Under the Bill, however, the son's earnings will form clearly his separate property to which even the father cannot well lay claim. A case of this kind occurring is no doubt improbable. Family affection is generally strong amongst Hindus and an educated son specially is not likely to lose his sense of moral rectitude to such an extent as to abandon his own father. Still such a contingency is possible and the Bill does not provide for it. Again the father and the son may live harmoniously, but the son may die leaving a childless widow behind him and a large property consisting exclusively of his self-acquisition. Under the Bill as between the widow and the father the former will have the precedence and the result might be that the father is left destitute. It might be asked whether this is not a harder case to be safe-guarded against. In the first place acquisition by "learning" is only one of several kinds of separate property recognised by Hindu law. This incidence of hardship is equally applicable to the devolution of other kinds of separate property and there is no specific reason why "gains of science" alone should be dealt with in a different manner, as between the father and the widow it is the latter that is likely to be more helpless and to stand therefore in a greater need of protection, and a law which secures her rights cannot be said to be inequitable. As a matter of fact we seldom see the father's interests jeopardized by those of the widow and they are not likely to be the worse off also when this measure becomes law.

7. As already stated the case above put forward is an extreme one. The dispute in respect to self-acquisition does not arise ordinarily between a father and his son or the son's heirs, but between collaterals one or two degrees remote, as between them the personal heirs of the person leaving large self-acquisition are certainly fitter objects of protection by law than those others whose claims are more remote. It might be said that a father in educating some of his sons expects the others also to be benefited thereby and that it will be frustrating the object he had in view by depriving the other sons or their heirs of their rights. When one is so disposed we might expect him to provide liberally for such other members, and this is what is actually done now. When he is not so disposed any amount of external pressure is not likely to be productive of the desired result. On the whole it is a matter which should be left to adjust itself according to the circumstances of each case rather than to be safe-guarded against by legislation.

8. Another objection which might be raised against the Bill is that by recognizing in unmistakable terms another form of separate property in respect to which there was still now a considerable amount of uncertainty and restrictions, it will have the effect of bringing about a further disintegration of the Hindu joint family system which is the normal condition of Hindu society and a further diffusion of property which is of doubtful utility to the welfare of the community at large. As regards the first portion of the objection in a society where partition is recognised by law and is enforceable on the motion of any one member of a family, the joint family system cannot thrive and must break up sooner or later. The effect of the present Bill will be not to accelerate the progress of disintegration, but to defer division by removing the cause of anxiety in the acquiring member which forces him to become divided when otherwise through feeling of delicacy and other considerations he may find it undesirable to do so. Whether the concentration of wealth in selected quarters or its diffusion amongst several is of greater benefit to a community is a controverted question which it is unnecessary here to discuss at length.

9. No other possible objection suggests itself to me. Even granting that there is some substratum of truth in the abovementioned objections, it must be admitted that the introduction of the measure proposed is likely to result in producing all the advantages enumerated in the last paragraph of the Statement of Objects and Reasons. The question to be decided then becomes whether the advantages or the disadvantages preponderate. On a careful consideration I am inclined to believe that the good will outweigh any possible harm which might arise and I therefore support the Bill.

31*st October* 1892.

From M.R.Ry. C. KALYANASUNDRAM CHETTIAR Avargal, Assistant Superintendent of Stamps and Stationery, to the Under Secretary to Government, Legislative Department, dated Madras, 15th November 1892.

With reference to your letter No. 47 of the 31st August last enclosing a copy of "a Bill to declare gains of learning by a Hindu to be the separate property" and the

annexure thereto containing a Statement of Objects and Reasons for an expression of my views thereon, I have the honour to state that I have carefully gone over the above papers and am of opinion that the Bill, if passed into law, would undoubtedly secure to the Hindu community the advantages which the Honorable Member has so ably put forward in his Statement of Objects and Reasons.

From the very nature of the Bill it could hardly be expected that the educated portion of the Hindu community would stand in the way of this wholesome measure obtaining a permanent place in the Statute Book of the land.

From M.R.Ry. Rao Bahadur T. PATTABHIRAMA PILLAI Avargal, Deputy Collector, General Duty, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 18th November 1892.

I gave my best attention to the provisions of the "Hindu Gains of Learning" Bill and carefully thought over the matter with reference to the authoritative decisions on the subject so tersely put in by the Honorable V. Bhashyam Iyengar in the Objects and Reasons of the Bill and with reference to the present state of the Hindu society. In my humble opinion, such an enactment as the Bill contemplates seems most desirable, as it would set at rest all the conflicting opinions of the commentators of the different schools of the Hindu law and put an end to the vexatious uncertainty of law on the point which at present exists. The authorities on the Hindu law and their commentators had in view the state of society as it existed at the time of the law-makers. The percentage of educated men among the Hindus, inclusive of those who have received no more than a mere rudimentary education, must have been very low when the law as regards the gains of learning commenced to prevail among the Hindus.

If with the aid of the Press, with the solicitude and exertion of the paramount power for the education of the mass, with the earnest desire on the part of the well-to-do Hindus to give their sons the best education available, with the increasing number of affiliated colleges and high schools in the country, and with numberless elementary schools in villages, &c., the percentage of educated men among the Hindus is only $6\frac{2}{3}$ per cent. for the Madras Presidency according to the census of 1881, there can be no doubt as to the number of educated men among the Hindus having been very limited in the days of the Hindu lawgivers, and education must have been confined only to such families which could afford funds for educating the children. It was, therefore, very proper in the olden times for the uneducated members of a family dividing equally the gains of learning of one who was educated from the funds of the family. Jimuta Vahana's comment that the gains of learning is one's own separate property, provided the education given him from family funds was only ordinary, shows that it is a later authority and the principle an improvement over the older authorities which made no distinction between ordinary and special education. In the present state of society, it is high time to remove the present uncertainty of the law on the point and to declare that the gains of learning among Hindus is the acquirer's own separate property. The continuance of the present uncertainty only serves to tempt the idle members of a family to live at the expense of the more talented member and to throw obstacles for the gifted member becoming divided and drive the latter to the wicked concealment of property and benami transactions. The settling of this knotty question by law would to a certain extent impart a healthy tone and raise the standard of morality among the educated and higher class of the Hindus. I do not say that there cannot be hard cases. As for instance, the parents of a poor family may part with their landed and other property for the education of the most intelligent boy in the family, relying entirely upon his gains for the future maintenance of the family, *i.e.*, of themselves and their other boys. If the boy take shelter under the new law and refuses to maintain his parents and brothers, all the members of the family will feel sorely disappointed; but such instances will be very rare and cannot be so many as to make the law a hardship to any appreciable

portion of the community. When the law is made certain, it will be simply an inducement to every one of the members of a family to work for himself and win his bread, instead of remaining lazy in hopes of participating the gains of learning of the more active member. Parents intend education to their sons as a sort of equipment to them for acquiring means of subsistence as well as for their conduct as men and members of society. It may be ordinary or rudimentary education, or special or technical education. All children are equally entitled to such an equipment and the discerning power of the parent selects the branch best fitted for each boy. One of the sons may choose the legal profession, another the medical profession, a third to trading, and so on. A discreet father, in whose mind no idea of participating in the gains of his sons enters, gives each son such education as would befit him for the profession he is found most inclined to; very probably a larger amount of family funds might be spent on the son gifted with superior intellect. The father couldn't hesitate to spend as much upon the rest of his sons if he found them equally good; and, therefore, if more money is spent upon one son than the other in a family, it is because that son was found more promising and deserving. The father arms each boy with such education and qualification as he (boy) is capable of to fight the battle of life in the world. It, therefore, stands to reason that the cost of such an equipment that the father defrays of his own free will from the family funds shouldn't affect the earnings of each son becoming his own self-acquired property. Learning is not the only qualification for gaining wealth. Character, health, hard work, chances and the will and discretion to turn such chances to good account have much to do in a man's success in life. It is, therefore, not very correct to say that a man's gains resulted from his learning alone. It is besides most illiberal to make the gains of a man of learning divisible among his brothers equally with him. On the other hand, it may be argued whether it isn't desirable that a man on whose education a larger amount of family funds is spent because of his talents should be left to share his gains equally with his less gifted brothers, as the commentators of the Hindu law would have it, and why the other members of the family should forfeit the privilege of sharing in the above gains which the law of the land entitles them to. I have here only to point out (1) to the extreme difficulty of proving how and why the father happened to spend more money on the education of one son than the others and whether the father was not anxious to educate all his sons alike and spend just as much money upon the other sons, and (2) to the disheartening uncertainty that now exists as to the success or otherwise of a suit to participate in the gains of learning of one member of a family. I shall ask those that are for leaving the law alone to pause for a moment and revolve in their minds whether the existing state of law is satisfactory and whether it doesn't demoralize those who work hard to gain wealth as also those who remain idle and plot for sharing the gains of the active member of an undivided family. What number of benami transactions, what amount of concealment of property, fraud and consequent heart-burning disappointments, what fabrication of false evidence, what waste of labour, wit and money, what number of profitless suits and waste of public time and the energy of public officials could be saved by making the law certain on this vexed question is another point to which I would invite the attention of those who are for leaving matters alone. It is clear, from the Hindu law quoted in the Objects and Reasons, that the lawgivers originally intended that vidhyadhanam or gains of learning should be made one's own self-acquired property; but Katyayana, the commentator, interfered and defined it as below:—"What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning." This definition, perhaps, was justifiable as the Hindu society was at Katyayana's time constituted. Whether just or unjust, all the other commentators, except Jimuta Vahana, caught the contagion and gave their dictums accordingly. The effect of these comments has been to handicap the gains of a man's learning and make it partible among the members of a family. The original idea of creating gains of learning as self-acquired property was altogether cast away. Some may, perhaps, think whether such a law as the Bill contemplates will not (in those cases where the father is dead, the eldest brother is the managing member and his brothers minors) prevent the minors receiving such education as their talents deserve and whether it will not serve as a motive to the managing

member to give no education whatever to the minors to save himself the trouble and the family the expense of educating and bringing them up, and whether the law, as it now stands, is not a powerful inducement to give the minors the best education they are capable of. To these, I have only to say that the internal management of the affairs of a family, the circumstances which induce and prevent the education of the minors, are so many and so varied that they cannot be brought under the influence of the law and strictly controlled.

I therefore do not hesitate to say that the Bill, when passed into law, will be an advantage to the society.

From M.R.Ry. V. SRINIVASACHARLU Avargal, Subordinate Judge, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated 19th November 1892.

I have the honour to receive your favour of the 31st August last accompanied by a copy of a Bill introduced into the local Legislative Council by the Hon'ble V. Bhashyam Iyengar "to declare gains of learning by a Hindu to be his separate property."

In his exhaustive Statement of Objects and Reasons, the learned author of the Bill has quoted *all* the Hindu law texts and the judicial decisions bearing on the subject and is of opinion that "if one were at liberty to deduce the law therefrom, disregarding the gloss of commentaries, however high their authority may be, he will not be far wrong in regarding the provisions of the Bill as being substantially in accord with such law."

This Bill, after its introduction into the Council, has been very anxiously considered and discussed on several occasions by several educated Hindus and a great many of them seem desirous that it should be passed without any alteration or amendment. They are of opinion that whether the Bill is or is not in accordance with the Hindu law, the gains which a Hindu member may make by his industry, skill and learning should be at his absolute disposal whether the education which he has received and which may have mainly contributed to the acquisitions made by him was imparted to him at the family expense or not. Others again seem, however, to take a different view, and, while recognising the very salutary principle underlying the Bill which tends to encourage habits of self-reliance and self-exertion among the members of a native family, they will at the same time insist upon every member, educated at the family expense or a father's expense, providing from his acquisitions for the education of the junior members of the family so as to give them a start in life and for the maintenance also of their aged and infirm parents. They, too, do not go so far as to advocate the partibility of any property acquired by such persons; but consider that it is but meet that they should not disregard the junior and dependant members, but should, while obtaining the benefit of the Act, make some compensation for it in the way suggested. Very often it is found that a father of humble means educates one of his sons, probably his eldest born, very much out of his means, by mortgaging or otherwise encumbering his little property in the hope that, when his educated son succeeds in the world, he will pay due regard to the bringing up of the junior members of the family. It is not also uncommon that, with a similar hope, a poor parent tries to leave by a sufficient amount of his beggings for educating one of his sons and brings him up. It is asked that whether in these cases it is proper to let go the educated member with his gains, freed of all obligations to contribute towards the maintenance of such parent or to educate his undivided brothers and nephews, and whether one can safely rely on the good will and moral sense alone of such a person. They seem to think that "the moral sense of the youths of the present day is too frail a reed to lean upon and what is merely a moral obligation is worse than no obligation nowadays when each man is for himself and none else." It is feared that, without

some provision in the Bill providing a safeguard for such purposes, the Bill, when passed, will break up the Hindu family system and cause ruin to many families and may necessitate also the introduction of a poor law for the country.

These arguments, indeed, seem to have some force; but how is this safeguard to be provided? There may not be any need for providing for the maintenance of old and helpless parents, as the law already existing will take care of them adequately; but it seems to me rather difficult, if not impracticable, to provide for a legal obligation for the education of dependant boys and girls. What kind of education should be imparted to them and for what period and at what expense, these cannot altogether be well defined and satisfactorily provided for in a legal enactment. One brother may ask for being sent to England for competing for the Civil Service or studying for the legal or medical profession, another may say he will go to Dehra Dún, and so on. Can the person educated at the family expense be compelled to open his purse freely for such demands, even if he had the means for it?

It seems to me unnecessary that any provision for such cases should be made. Whether a person who makes gains by "*his science*" may or may not be educated at the family expense, the duty of educating the junior members of his family, in the absence of family property, may well be left to his good and cultivated moral sense and no legal obligation needs to be imposed upon him. The advocates of the opposite theory need not be reminded of persons who have acquired their education otherwise than at the family expense, showing their generosity by the liberal aid they have given pecuniarily and otherwise not merely to undivided members of their family, such as brothers and nephews, but also to others more distantly connected with them. Numerous instances may be quoted in which people have voluntarily settled a substantial portion of their gains upon dependant members for their support. How many sons of sisters and grandsons by daughters are now brought up by their well-to-do maternal uncles and grandparents. Sons of divided and poor co-parceners are often educated at the expense of their richer relations. What is it that prompts these people to perform these acts of generosity towards such people? No legal enactment imposes any obligation upon them. If so, why should such legal obligation be needed in the case of a person educated at the expense of family property? If the legislature tried to impose one, how long is this to last? Suppose he tried to separate himself by legal measures from the rest of his family, should the obligation continue to exist even after it. To attempt to do so will be to advance a step further than what is supposed to exist under the present state of the law and that obligation may be also sometimes more onerous than declaring his gains to be partible.

It is therefore my humble opinion that the fear entertained of the Bill, when passed, revolutionizing the Hindu family system and disintegrating and ruining families, seems groundless and that the Bill needs no alteration nor amendment. If the moral sense of any person is "too frail a reed to lean upon," he cannot be expected to discharge even his legal obligation. As soon as he begins to acquire property, he may try to frustrate it by enforcing a partition of the little property they may possess then between himself and the other members, and when that is done there will be an end of it, unless the obligation should attach to him even after separation, which, as I remarked already, is neither practicable nor proper.

The learned author of the measure before the Council appears to have carefully thought out the matter on all sides and framed it so as to suit the sense of the educated community as it is at present constituted.

From M.R.Ry. S. NARAYANASWAMI CHETTY Avargal, Diwan of Venkatagiri, to the Under Secretary to Government, Legislative Department, dated 20th November 1892.

I have the honour to submit the following views on "the Bill to declare the gains of learning by a Hindu to be his separate property."

In my opinion the Bill is an important and a necessary measure, important in removing the distressing uncertainty of law on this subject and necessary in introducing peace into many a Hindu educated home.

Various texts are quoted in support of the main principle of the Bill. I should think that even without them the measure is desirable in the present advanced state of Hindu society. In my opinion there is no new departure from the Hindu law as is explained at length by the Honourable Member in charge of the Bill in his Statement of Objects and Reasons, and it is unnecessary to go over the same ground here, but a certain amount of obscurity having prevailed on this subject a clear piece of legislature has become an undoubted necessity.

From M.R.Ry. A. SASHIAH SASTRI Avargal, to the Under Secretary to Government, Legislative Department, dated Pudukkóttai, 20th November 1892.

In acknowledging your printed demi-official of the 31st August, received on the 14th September 1892, I much regret that I have allowed such delay to occur as to necessitate your reminder, dated 17th instant.

2. The subject of the Bill drafted by the Honourable Bhashyam Iyengar is a very serious and complicated one.

3. There is no question that the ambition of modern youth is to monopolise for themselves and their children all the fruits of the education which they may have received at the expense, partially or wholly, of the joint family property, or even of such acquisitions, as begging, by the personal labours of the common parents; but the further question is whether a declaration of law such as is proposed will not imperil more vital interests and the well-being and the mutual relations of the Hindu society than appear on the surface.

4. I am of opinion that a law of the kind will grate against the sense of the whole nation, will undermine to some extent the relative and hitherto unquestioned titles to, and claims of, the members of a joint family and produce a general disturbance of property and uneasiness, if not soreness of feeling. I would rather trust the established courts of the land to decide each case as it comes up before them on its own merits as has been the course hitherto—a course which leaves a wide door for generous proposals and sensible acceptance of compromises by members of a joint family—a door which will in most cases be shut against them if there was a law to back those who are ungrateful and ungenerous to the parent stock after Fortune has singled them out for her favours.

From M.R.Ry. M. SRINIVASA RAO Avargal, B.A., B.L, Deputy Collector, General Duty, Madura, to the Under Secretary to Government, Legislative Department, dated 21st November 1892, No. 589.

With reference to your letter No. 47, dated Ootacamund, 31st August 1892, Legislative Department, I beg to offer my views on the "Gains of Learning Bill" as follows.

2. I beg to submit that I fully endorse the views of the Honourable Member, who is the author of the Bill, expressed in the "Statement of Objects and Reasons" and to state that, in my humble opinion, it is now high time that the law on the subject should be definitely settled by means of legislative enactment. I also think that the proposed enactment to declare the property acquired substantially by means of "learning," as defined in the Bill, to be the sole and separate property of the acquirer without reserving any right to the other members of the acquirer's joint family, although they or any of them, or the family, may have wholly, in part contributed to, or aided, the acquirer in attaining the learning or education, by means of which the property is acquired, is a just and equitable settlement of the question and is one that is calculated to promote the happiness and progress of the Hindu community. As observed by the Honourable Member, in the present condition of Hindu society, such an enactment is very much needed in the interests of the peace and happiness of the

Hindu families. Under the beneficent rule of the British Government which has afforded, and is still affording, many facilities for the acquisition of various kinds of education by which people could not only earn their livelihood, but also acquire a good deal of wealth, many Hindus, who are members of joint families, have acquired and are acquiring properties by means of their education in the professions of law, medicine, engineering, and by employment in the numerous other departments of the public service. The measure will therefore be welcomed by all such persons. I do not believe that there will be any considerable portion of the community, excepting a few idle members of the joint families who have not taken advantage of the facilities afforded by their parents and the Government to acquire any useful education, who will in any way be opposed to the measure. The Hindu parents of the present day, who fully appreciate, and who are fully alive to, the advantages to be gained by the modern education in various branches of knowledge, as a rule, afford equal facilities to all their sons in acquiring learning and education. As a general rule, all the sons are started on equal terms so far as education is concerned with reference to the means or the family funds required for acquiring the desired education and learning. It is only in some exceptional cases, either owing to the natural incapacity of any particular son or his own idleness or misconduct, that he lags behind the others who began with him on equal terms. There may be however cases in which family funds have been utilized to a much larger extent than the means of the family could afford in the case of any particular member, when, for instance, a member is sent to England to be educated for the bar or the Civil Service. In such cases it may be contended that it is only "fair that his gains should fall into the common stock as a recompense for the extra outlay incurred;" but I beg to submit that even in such cases the gains of the acquirer should be declared his separate property. This may be considered a little hard on the family; but there is really no reason to fear that, in such cases, the acquirer will forsake the other members of the family and enjoy all his gains himself. On the other hand, it may be hoped that the feelings of affection and cordiality between them will increase and the other members will feel proud of him and look upon as one who has done great honour to the family, and, in fact, raised it in the estimation of the people generally. It is only reasonable to suppose that in such circumstances the acquirers will reciprocate the feelings. If, on the other hand, there be feelings of antagonism, the other members trying to assert a right to share in his acquisitions, and he, on the other hand, contesting such right, there will be no happiness in the family and there will be no inducement to enterprise.

3. I am of opinion that there will be no hardship in making the enactment applicable to all acquisitions whether made before or after the commencement of the Act. The exceptions provided for in section 4 are sufficient.

4. The subject, though forming part of the Hindu law, is one entirely unconnected with any religious ceremonies or practices prescribed by any shastras or custom and concerns only the civil rights of the acquirer and the other members of the family irrespective of the performance of any religious rites or ceremonies that the legislature may without any—the least—suspicion that its action may be regarded as an interference with religious customs and practices pass the measure in the interests of the happiness of all parties concerned, unmindful of its contravening any recognized rule of Hindu law laid down in the smrities or their commentaries.

5. The existing state of the law on the subject has been so ably reviewed by the Honourable Member that it is quite unnecessary for me to say anything on the point. It is quite clear from the "Statement of Objects and Reasons" appended to the Bill by the Honourable Member that it is hopeless to search for any reasonable and clear rules of law either in the smrities or their commentaries, or in the decisions of the courts for the solution of the various difficult questions that arise in connection with this part of the Hindu law and in my humble opinion it is not necessary to appeal to any authority based on Hindu texts of law or decisions of courts to justify the measure and to bring home to the public its utility. I beg to submit that it is sufficient to show practically how highly beneficial the measure will be and how very necessary it is to have a definite legal enactment in the place of the chaos of Hindu law texts and the decisions.

6. The following are a few of the practical results of the propo[illegible]enactment :—

(1) The measure will have the most important practical result of removing "the distressing uncertainty in which this topic of Hindu Law is involved," and thus put an end to a great deal of unnecessary and sometimes "ruinous and demoralizing litigation" among the members of the same family.

(2) The acquisition of property by means of learning will be stimulated, as the acquirer will be sure of enjoying the whole fruits of his labour himself without any anxiety or uneasy feeling that the other members of the family would put forward unjust claims to deprive him of his hard-earned property. This will naturally promote individual enterprise which is an important condition for the moral and material progress of a community.

(3) As a consequence of the above two results, the measure will also tend to promote peace and goodwill among the members of a joint family, who, instead of treating each other with distrust, and of entertaining inimical feelings towards each other, on account of a real or imaginary injury to their interests by the conduct of the acquirer of property in respect of such property, would regard each other with feelings of cordiality and affection and confidence when their rights are clearly defined and declared. I beg to submit that several cases of members of joint families treating each other with feelings of distrust and antagonism have come to my notice, the sole reasons for such a state of things being the uncertainty of the law.

(4) The measure would also to a great extent put to an end to those objectionable and sometimes fraudulent transactions resorted to by the acquirer of the property, especially in the case of a member of a Marumakkatayam or Aliyasantana family, with the view of protecting his acquisitions from the clutches of the other members of the family and for securing it for his own wife and children.

7. I beg to suggest the addition of the following expressions in the draft Bill, viz :—

(1) "physical or mental" after "and training of every kind" in line 3 of 1st clause of the 2nd section; for instance, the training acquired by gymnastic teachers, gymnasts, acrobats, dancers, songsters, &c.

(2) "wholly or in part" after the word "aid" in the 4th and 5th lines of clause (*a*), section 3.

(3) Although aid strictly implies only partial aid, it is better to make the expression clearer and wider by the insertion of the above expressions after it.

From M.R.Ry. M. B. SUNDERA RAO, Subordinate Judge, Ellore, to the Acting Under Secretary to Government, Legislative Department, dated Ellore, 24th November 1892, No. 540.

With reference to your letter No. 47, dated 31st August last, directing me to furnish my humble opinion on the subject of Hindu Gains of Learning Bill, I most submissively and respectfully beg to enclose herein a memorandum containing my views on the subject for being laid before His Excellency the Governor and the Members of the Council for their consideration.

Enclosure.

Memorandum of the Opinion of the undersigned with reference to the Hindu Gains of Learning Bill.

The speech of the Honourable V. Bhashyam Iyengar, B.A., B.L., is a complete exposition of the Hindu Law contained in various texts and commentaries as well as in the decisions of the highest Courts both in India and England.

Most of the texts referred to in the speech clearly laid down that gains of learning acquired at the expense of the members of the family or patrimony are divisible among the other members of the family. They are chiefly from the Smritis of Narada, Catyayana, Vyasa and Yajnavalkya, and also from the commentaries of Mitakshara, chapter I, paragraphs 5, 6 and 8, of Dayabhaga, chapter VI, section I, paragraphs 5, 16, 17 and 18, and also of Smruti Chendrika, chapter VII.

The old Smritis and commentaries of the highest authority above specified recognized the partibility of the gains of learning if such learning is imparted to the acquirer at the expense of the patrimony or of an undivided co-parcener; but the original texts are not uniform in defining the quality of learning. Some simply use the word "learning," while others distinguish it by calling it as "science" or "art." But I presume that such learning was meant to apply to superior education, but not mere rudimental or elementary.

The object of the Bill is doubtless praiseworthy and preventive of good many disputes which daily occur in Hindu families and conducive to the maintenance of peace and comfort in the family besides giving security to the acquirer. But at the same time it is, I apprehend, fraught with some mischievous consequences in another way and detrimental to the interests of the poor members of the family, if they should become unfortunately orphans at a season when they should be put to education and may prove a great drawback in the advancement of education in the Hindu society.

Parental exertions for educating children flow naturally from their very heart, and it is their very natural affection that prompts the parents to educate their children in the best way possible. It is equivalent to the suckling of the milk of the mother's breast. On the death of parents when the junior members fall under the protection of a uterine or step-brother or an uncle, the case would be different. If he is not allowed a share in the fruits of learning acquired at his expense, he would not care a pin if his brother or nephew is not educated whether he has patrimony or not in his hands. He may be inclined naturally to educate his own children and leave his brothers illiterate even when paternal funds are at his disposal. Instances are too numerous and can be found in our daily experience to convince us of a brother on growing old becoming an enemy to his junior brothers and trying to impoverish them by all possible means. Without an incentive of getting some gain for himself by the education of his junior brother or nephew, I am afraid, there is nothing to induce him to undergo the trouble of giving a liberal—nor even ordinary—education to him. When there are paternal funds at his disposal, a suit can be filed against the managing uncle or brother by a relative or friend of the family for providing him for the maintenance and education of the nephew or brother, but not in its absence.

I should like, therefore, to provide in the Bill that when a brother or uncle or other member of the family than parents should educate another member of it at his own expense without the aid of the patrimony, he should be allowed a share out of the acquisitions made by the acquirer of learning at his expense. When he receives his education at the cost of paternal estate, the other members need not be allowed a share of his acquisitions made by the learning.

Such education must be of a superior kind imparted at the brother's or uncle's expense, but not ordinary which can be had at any pial or charity school without much expense.

The case-law on the subject supports my view on this point, while some of the Smrutis and commentaries go in the same direction. The chief cases are Krishnaji Mahadev Mahajan *versus* Moro Mahadev Mahajan reported in Indian Law Reports, XV, Bombay, page 32; and Boologam *versus* Swarnam, Indian Law Reports, 4, Madras, page 330.

(Signed) M. B. SUNDERA RAO,
Subordinate Judge.

From M.R.Ry. K. P. SANKARA MENON, Vakil, High Court, to the Under Secretary to Government, Legislative Department, dated Mylapore, 25th November 1892.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following views on the proposed Bill "to declare gains of learning by a Hindu to be his separate property." I am sorry I was not able to do this earlier owing to my ill-health.

The conflicting opinions of Smriti writers and commentators and the decisions of Courts of Justice referred to in the statements of objects and reasons accompanying the Bill show clearly the present uncertain state of the law on the subject. The distinctions between general and special education and between ordinary and extraordinary gains of science are so fine and sometimes imaginary that they are practically unworkable, and as a necessary result a good deal of uncertainty as to their rights prevails among members of families which very often leads to untimely partition suits with all their baneful consequences.

The fetters that are put by Hindu Law on the disposition of joint family property, the rules against gift, devise, descent to personal heirs, or liability for individual debts after death though convenient and even necessary in an early state of society,

check individual effort and serve as a clog on the progress of the country. That these limitations should control the disposition of property acquired by a member of a family by his own exertions, natural gifts and opportunities well used, simply because he was educated at the family expense is certainly undesirable.

As regards persons governed by Marumakatayam law the evil is still greater, since under that law partition is not allowed. Even as regards self-acquisition, the power of disposition among these people is very much limited, being confined to alienations *inter vivos*, and though this measure does not confer any new rights of disposition over their self-acquired property, yet it in a measure promotes a greater circulation of property by taking self-acquisitions out of the category of Tarawad property.

It seems to me therefore that under the existing state of circumstances there is a real ground of complaint, and the passing of some such measure as the one under discussion will be a step in the right direction.

The cautious and carefully thought-out measure drawn up by Mr. V. Bhashyam Iyengar meets the difficulty without going too far. It does not deal with cases where joint family funds are the immediate cause of the acquisition nor to cases where self-acquisition is constituted joint property by the acquirer himself. It only extends to property acquired by special education the rule which may be taken to apply to property acquired by general education.

The objection that is often raised against the Bill is that it will deter the senior members of a family from imparting proper education to their juniors by taking away the prospective reward of sharing in the earnings of the latter. This, in my opinion, loses sight of the law as it is which allows partition at any time, and it also underrates the strength of family tie and affection that holds Hindu families together.

I believe that the present Bill, if it becomes law, will pave the way for the codification of other branches of Hindu Law in conformity with modern ideas and tendencies of Hindu society, and dispel the prevailing idea that places Hindu Law beyond the field of legislative control.

From Raja G. N. GAJPUTEE RAO, Vizagapatam, to the Secretary to Government, Legislative Department, dated Vizagapatam, 26th November 1892.

I beg to acknowledge the receipt of your letter, dated 31st August last, No. 47, forwarding copy of a Bill, with Statement of Objects and Reasons, to declare the gains of learning by a Hindu to be his separate property, which the Honourable V. Bhashyam Iyengar has introduced into the local Legislative Council, and asking for my views on the same.

It appears that the Calcutta and Bombay High Courts have ruled that the gains of ordinary education are impartible, while those of higher or special education are divisible in case the acquirer of wealth has received his education at family expense. From the remarks made by the Madras High Court in their judgment in the case of Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, page 320) in which the opinion of the Privy Council in the case of Paulium *versus* Paulium was quoted, it is probable that they will adopt the law of Bengal and Bombay in this respect in the Madras Presidency also.

The Bill, however, dispenses with all distinctions in the nature of education or training and declares the gains of all learning or training, whether general or special, to be the separate property of the person who may acquire the wealth. In many cases higher or special education is given at family expense for the express purpose of gain and for the benefit of the family, and often shared by the person who expends on one's education in the first instance and is a source of support to the family. Even the Dayabhaga, which is more liberal than other Hindu Law books in this respect, charge the wealth of a co-parcener with partibility when it may be acquired by science imparted at family expense purposely intended for the same.

In my humble opinion I think that the new measure may be confined to the limits now defined by the Indian Courts, that is to say, that the gains of elementary education will be impartible and those of higher or special education will be divisible among the co-parceners if the family stock has been expended for the purpose of education and not otherwise.

From M.R.Ry. A. VENKATARAMANA POI, Avargal, Subordinate Judge, Vizagapatam, to the Assistant Secretary to Government, Legislative Department, dated Vizagapatam, 28th November 1892.

As directed in your circular No. 47, dated 31st August last, I beg to submit herewith a paper containing my remarks on the "Hindu Gains of Learning Bill."

Enclosure.

Remarks on the "Hindu Gains of Learning Bill."

The Bill purposes practically to abolish the Hindu Law rule regarding the "Vidyadhanam" of members of undivided families and to declare that all such gains are impartible.

2. Assuming that it is either desirable or necessary to resort to legislation for the purpose of removing the uncertainty that undoubtedly exists as to what construction will be put upon the Hindu Law texts on the subject by the final Courts of Appeal, it is, in my humble opinion, inexpedient to declare that in no case shall that "Vidyadhanam" be partible. It is sufficient to adopt the more mediate view, in favour of which the Privy Council have expressed the bearing of the opinion in Pauliem *versus* Pauliem (Indian Law Reports, I, Madras, 252), viz., that the ordinary gains of science are impartible. "What is ordinary education?" is a question to which no general answer can be given. It must be answered with reference to the circumstances of each particular case. No statutory enactment can provide general rules which will be found applicable to the varying circumstances of Hindu families, but the difficulty, or even impossibility, of framing such rules affords, in my humble opinion, no justification for sweeping away the Hindu Law rule on the subject.

3. Next as to the necessity for the proposed legislation. In the case of Statute law, the Legislature does interfere to correct the evil of conflicting or glaringly incorrect judicial interpretations thereof by amending the Acts and declaring their real intention, but the Government has always been very reluctant to resort to legislation in matters relating to native laws and usages. It is only where the evil is of great magnitude that the Government undertakes to provide a remedy by legislation. In my humble opinion the evil now brought to notice is really not so great as to justify legislative interference with the Hindu Law on the subject.

4. As pointed out in the "Statement of Objects and Reasons" itself there are other rules of Hindu Law which are equally, if not more, injurious in their effects, *e.g.*, the rule which incapacitates a member of an undivided family to devise or to make a gift *inter vivos* of the whole or any part of his interest or share in the joint family property, and intercepts its descent to his personal heirs except his sons. The fact is, the average Hindu does not at all consider this result to be an evil. The very fact that in the case of "Vidyadhanam" "feelings of delicacy" deter many persons from seeking partition indicates that Hindu society in general considers it an act of selfishness on the part of the "man of learning" to attempt to exclude the rest of his family from its benefit.

5. The relief provided by the Bill is confined to the comparatively limited, and, under the influence of modern life, dwindling class of persons, whose "feelings of delicacy may postpone partition"; for, in the case of others, partition can put an end to "the uneasy feeling" as to whether their "Vidyadhanam" will be held partible or not.

6. No department of human concerns is free from uncertainty. In the Hindu society itself there are many points connected with their law of inheritance and property which are not yet set at rest by judicial decision. This is a necessary evil, and legislature cannot usefully interfere to abolish existing rules because they may produce hardship in particular cases.

7. Nor is the proposed law without its disadvantages. It is well known that many families with limited means manage to spend the best portion of their substance on the present-day education of one or more of their boys in the full expectation that his or their earnings will benefit the family. The Bill holds out a direct premium to heads of families to abstain from incurring expenditure on the proper education of the junior members. Where the head of the family is an uncle or other remote relation of the school-going members, their education will often receive but scant attention from the former.

From M.R.Ry. M. R. RAMAKRISHNA AIYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Vannarpet, 17th December 1892.

With reference to your letter No. 47, dated 31st August 1892, and reminders, dated 17th November and 5th December 1892, I have the honour to state that, owing to pressure of professional business in this part of the year, I have not been able to submit my reply as early as I should wish.

I shall send in my reply within ten days from this date.

From Diwan Bahadur P. SREENEVAS RAO, Avargal, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

I have the honour to submit my remarks on the "Hindu Gains of Science Bill" as directed in your letter of the 31st August last.

Enclosure.

Remarks of P. SREENEVAS RAO (Madras City Civil Judge) on the "Hindu Gains of Science Bill."

I am not in favour of this Bill. The Legislature has placed itself under the obligation of preserving the benefit of the Hindu Law to the Hindus in all matters concerning religion, caste, marriage, succession and inheritance. This policy was declared in the 21st year of the reign of King George III; and the Statute of 21 George III, Cap 70, passed in 1791, ordained in section 17 that, "in order that due regard may be had to the civil and religious usages of the natives (of India), it has been enacted that the rights and authorities of fathers of families and masters of families, according as the same may be exercised by the Gentoo (Hindu) or Muhammadan Law, shall be preserved to them within their families respectively; nor shall the same be violated or interrupted by the proceedings of the said Courts." This policy has been emphatically reiterated in all subsequent enactments and Letters Patent relating to India; as well as in Regulation III of 1793 of the Bengal Code, and in Regulation III of 1802 of the Madras Code, which latter provided (section XVI) that "in suits regarding succession, inheritance, marriage, caste, and all religious usages and institutions, the Muhammadan Law with respect to Muhammadans, and the Hindu Law with respect to Hindus, are to be considered as the general rules by which the Judges are to form their decisions." This is the law at the present day as declared in numerous subsequent enactments.

The law thus preserved to the Hindus being mainly founded upon religious principles peculiar to their sect, and the propounders of the law being influenced more by spiritual considerations than secular ones, this law differs from other laws in several important particulars. So that, unlike the laws of other countries, where ownership is generally single, independent and unrestricted, the rule in the Hindu Law is joint ownership; and the judicial authorities have invariably held that joint ownership is to be presumed in every case until the contrary is proved. Where such co-partnership has continued and the joint property been instrumental, in however small a degree, in the acquisition of the property a right to the benefit of each other's labours is quite incidental; the fruit of the labours of all the members of the family goes to the common stock; and if one of them is possessed of any aptitude for any particular kind of labour, his skill is exercised for common benefit. And for all this, he is in return rewarded by an interchange of similar good offices on the part of the other members; such as the improvement of the property by various means; the increased comfort of the family-home; the services rendered to aged parents and other elderly people in the family whom all the members are equally bound to protect; and, lastly, the spiritual benefit which some members endeavour to secure for the common welfare, while other members are engaged in secular affairs. And he is further compensated more substantially by other means also; thus, for instance, while the law places a member under the obligation by virtue of co-partnership to allow his father and brother to participate in his acquisitions, it confers upon him the right of participating in the property, which he never acquired, and which, according to other laws, would be considered to be the exclusive property of the father alone; an inchoate right originating in birth, and enforceable as against the father, even during his life-time.

Thus it will be seen that the Hindu Law is not arbitrary; but is based on principles of equality as to rights and obligations.

Further it must be remarked that the Hindu Law does not in the least ignore the right of any individual member to the *exclusive* enjoyment of his acquisitions, where they are made without the aid of the joint funds. The rule of law in this respect may well be stated in the words of the judgment of the Madras High Court passed nearly thirty years ago in what may be called the leading case on the point (Chalkonda Alasani *versus* Chalkonda Ratnachellam, Madras High Court Reports, II, 56), thus:—"The gains of science are devisible when such science has been imparted at the family expense, and acquired while receiving a family maintenance." This ruling seems to be the result of a correct interpretation of the laws extant on the subject, and appears to be quite just and proper. Mr. Justice Holloway in his judgment in the said case observes that "there seems nothing unreasonable in this provision"; and Sir Richard Couch, the Chief Justice of Bombay, following the said ruling of the Madras High Court, says: "Nor, having regard to the usages of the native society, do we think it is bad law." (Bombay High Court Reports, VI, Appellate, Civil, I).

Nevertheless it is quite possible that this rule may entail hardship in some cases; for, as observed by Sir T. Strange in his work on the Hindu Law, "the effect of the use of the joint stock in rendering separate acquisitions in general, common, is attended sometimes with injustice, where in cases of small patrimony large fortunes are made by the unaided exertions of enterprising parceners, of which benefit may eventually be shared by drones who have in no degree conduced to their accumulation. Nor, to obviate this, is there any resource, where timely separation has been omitted." And Sir R. Couch, in the Bombay case above noticed, says, "there may be hard cases, and the remedy for such is in the hands of the parties themselves, viz., to divide."

It is broadly hinted in the Statement of Objects and Reasons of the Bill under consideration that the rule of the Hindu Law above noticed may be disregarded, as it is based, not so much upon the original Smriti texts, as upon the authority of the commentators. But this, in my opinion, is not allowable; firstly, because it is not for us at the present day to impugn as unfaithful the construction put upon the law by these commentators whose authority has from time immemorial been recognised by the Southern Jurists without a word of demur; and, secondly, because, although the Smriti texts are of paramount authority, yet usage has interfered with the precepts of the Smritis, and time has rendered their language obscure, so much so that commentaries are now looked to as the true expositions of the law. "It is the opinion of the Southern Jurists," says Sir T. Strange on the authority of the great Sage Vrihaspati, "that text-books are not of themselves authority; and that the only authority in Hindu Law is to be sought in the later times in the conclusions and decisions of the authors of the several digests and commentaries, according to the schools to which they respectively belong." Here it is remarkable that the famous Mitakshara, which avowedly gives the law to the Hindus in Southern India, is nothing but a commentary of Vignana Yogi upon the original Smriti text of Sage Yagnavalkya; and the doctrine now under consideration is in accordance with that work.

From the above it will be seen that the rule under consideration is based upon fundamental principles of the Hindu Law, upon which the status of the Hindu society is established and maintained; and which the Legislature has declared it to be its policy to preserve intact; that such rule is quite fair and equitable; and that in case the practical working of the rule is likely to prove prejudicial to any individual member, the law has already provided a remedy for him, which he may exercise without infringing the general rule of law.

In respect to the law thus established, the legislative interference can hardly be justifiable, unless it is shown that there prevails an uncertainty in the practical working of that law, which cannot be removed but by the Legislature. The Bill under consideration is intended to apply to the Madras Presidency alone; and in this Presidency there is no uncertainty, but a perfect uniformity is observable in the course of the judicial decisions in favour of the doctrine now prevailing here. The leading case on the point is that of Chalkonda Alasani *versus* Chalkonda Ratnachellam, above referred to, which was passed by the Madras High Court so far back as 1864 (II, Madras High Court Reports, 56). This was followed in the case of Gungadharadu *versus* Narasamma decided by the Madras High Court in 1872 (Madras High Court Reports, VII, 47). And up to the present time these decisions have not been superseded or over-ruled.

It is said that in the said leading case there was a difference of opinion between the District Judge and the High Court. But a careful perusal of their decisions will show that they recognised the principle of law both alike, but only differed as to matters of fact as to what constituted the gains of science, as clearly observed by Mr. Justice Holloway in the same case. And in the second case above mentioned, Mr. Justice Kindersley remarked "it is impossible to read the authorities without concluding that the question must be upon the facts of each case how far the common family means were instrumental in enabling the professional man to earn the property." I do not think that the Legislature will consider it necessary to interfere in such cases, and lay down hard-and-fast rules in respect of a doctrine, whose practical application is variable according to the facts peculiar to each case.

I am aware that the course of judicial decisions is different in Madras from that in Bengal and partly in Bombay in this respect; but this cannot afford the slightest justification for altering the law in Madras. For the Hindu Law prevailing in Bengal varies from that in force in Madras, not only in this respect, but in numerous other and more important matters also. Thus, in Bengal, sons have not ownership in their father's property, ancestral or other, until after his demise, whereas in Madras sons can enforce partition upon their father during his lifetime. The father takes his deceased son's estate before the mother in Bengal, while the mother takes first in Madras. In Bengal the property of a man dying without male issue goes to his widow, whether he was or was not divided from his brothers; but in Madras the widow can only succeed in a divided family. This great divergence in the law is due to the corresponding divergence in the manners and customs of the people inhabiting the two Provinces, and to the different schools of thought followed by them. In such state of things, the Legislature would no doubt consider it not quite safe or expedient to attempt to alter the law in Madras to suit it to the views prevailing in Bengal in respect of the doctrine now in consideration or in any other respects.

In the case of Pauliem *versus* Pauliem which came before the Privy Council some years ago (Indian Law Reports, I, Madras Series, 252) a question was raised with reference to the doctrine under consideration, but was not decided. Their Lordships, however, passed an *obiter dictum* not quite favourable to the rule laid down in the Madras cases, and concluded by remarking that "it may hereafter become necessary for this Board to consider this doctrine." So then there is a prospect of the subject being conclusively settled by the Highest Tribunal when a concrete case may go before it in due course; and in the meantime it is also quite possible that the High Court in Madras may avail themselves of the dictum thrown out by the Privy Council, and alter the course of its decisions. Already we see some signs of a change in this direction; for in Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, 330), the Madras High Court has shown a decided leaning towards the dictum of the Privy Council. It is only in this way that certain knotty points in the Hindu Law have been gradually set at rest,—as for example, the question whether the giving of the eldest or the only son in adoption was valid or not; whether the performance of the "homan" sacrifice was essential to a valid adoption, and so on. No interference of the Legislature was ever considered necessary for settling any and every arguable point in the Hindu Law or any other law.

In conclusion, I beg to point out that at present there is no question of laying down a new law. The question here is purely one of the interpretation of the existing law, and of its adaptation and application to the facts peculiar to each case, neither of which is within the cognizance of the Legislature.

From K. SHESHADRI IYER, Esq., Diwan of Mysore, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

In reply to your letter No. 47, dated the 31st August 1892, I beg to submit my views on the Bill introduced by the Honourable V. Bhashyam Iyengar into the Madras Legislative Council for declaring the gains of learning by a Hindu to be his separate property.

2. The ideas of joint family and the moral obligation of an earning member to support the unearning members are deeply rooted in the Hindu mind, and, as a matter of fact, the majority of earning Hindus of the present day actually support, often at the sacrifice of their own personal convenience, the uneducated and unearning members of their families and even distant relations having no legal claim on them. The earning member, however, not unnaturally feels it hard and unjust that the fruits of his own hard labour and professional skill should be claimed *as a matter of right* by persons who are far inferior to him in intelligence and industry and who are either unable or unwilling to contribute in any way towards the acquisition of the wealth in which they claim to participate. He would, in most cases, be found most willing and ready to assist his poor relations if the matter were left to his own good sense, natural affection and desire to win public esteem. On the other hand, to the man who is dead to the dictates of natural affection and the duties enjoined by the opinion of society, there is already, under the existing system, a ready means of escape, as he has only to take the precaution of having a division of family property effected when there appears a prospect of his attaining to wealth. The real sufferer under the existing system, therefore, is the educated earning man having a respect for the opinion of society and natural affection for his brothers and more distant kindred, who hesitates to resort to a division of family property, an extreme measure

which is highly distasteful to every Hindu, as it involves a severance from the rest of his family and renders him for all practical purposes, including those of religious ceremonial, an absolute stranger to them.

3. The popular opinion too, except in some remote rural tracts where the people still continue to live in the old primitive ways and are unaffected by the great inequalities of position and property caused by Western education, is, I believe, not against the spirit of the provisions of the Bill. For, as a matter of fact, at the present day earning members of families, though supporting those dependent upon them are willingly allowed to keep the great bulk of their gains as their own property and suits for partition of such gains are rare. The proposed legislation, therefore, is not, to my mind, so opposed to the feelings of the Hindu community as it may at first sight appear.

4. Under any circumstances it seems desirable that some action should be taken for the protection of the earning members who, in the present uncertainty of the law, as contained in the somewhat conflicting decisions of the High Courts on the subject, or in a state of doubt and indecision.

5. I am thus in favour of the proposed legislation, because—

(1) it will at once remove the existing uncertainty of the law on the subject;

(2) it is only just that the fruits of a man's labour should be declared to be his own; and

(3) it is expedient that such a declaration should be made as it will prove an incentive to further exertion to attaining to success in life.

From M.R.Ry. S. SESHAYYA, First Lecturer, Government College, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated 12th December 1892.

In reply to your letter of the 31st August last, I beg to submit the following remarks:—

I concur with the Honourable V. Bhashyam Aiyangar in nearly all that he has said in his Statement of Objects and Reasons.

Admittedly the law of partition of the gains of learning is at present uncertain and is a source of most expensive and demoralizing litigation with Hindu families. The legislation now proposed will set the law at rest, and will, I am persuaded, have a salutary economical and moral effect on the Hindu community at large by compelling its members to greater self-reliance, thrift and industry than they are willing to practice at present. *Manu*, the ancient law-giver, observes that, by the division of one family into many families, *dharma* would multiply. The observation is true not only in the limited sense in which the word is interpreted, but is more true in the extended sense of the term including all a man's duties.

I do not believe that the proposed legislation will at all be repugnant to the feelings of the more thoughtful section of the Hindu community. Nearly all with whom I have discussed the question, including among the number several non-English-educated gentlemen, have expressed their approval of the Bill. The only objections that can be urged against it are:—

1*st*.—That a definite provision of law, which secures to members of undivided families the exclusive enjoyment of their gains of learning, may tend to weaken in those who are able to earn the sense of responsibility for giving, by education, or otherwise, a start in life to those of their nearest kinsmen—their brothers and cousins—who may be in need of it.

2*nd*.—That the head of a family may not, when the Bill should become law, take the same interest that he does now in the education of his sons, giving to the more gifted of them a high education at a great cost in the hope that the earnings of the more capable will be used for the support of all.

This is no doubt a possible remedy. But it is scarcely reasonable that a person who postpones such division should be made to pay a heavy penalty. And if self-acquired property of a certain kind belongs after such division exclusively to the acquirer and his heirs, the mere absence of a division cannot so totally alter the character of that property as to make it partible among brothers and cousins.

From Rai Bahadur P. RAMASAWMY CHETTIAR, to the Secretary to Government, Legislative Department, dated Madras, 9th January 1893.

I was duly favoured with your Circular No. 47, of the 31st of August last (with its enclosures), inviting my views on the "Bill to declare gains of learning by a Hindu to be his separate property," which the Honorable V. Bhashyam Aiyangar had obtained permission to introduce into the (Local Legislative Council), and regret my inability to give the matter earlier attention.

2. The "distressing uncertainty" of this branch of the Hindu Law, which the Bill purports to remove, is not due to any very material difference of opinion either among the early text writers, or among the subsequent glossators, as to the fundamental basis of the law, which is but the equitable principle that patrimonial funds should not be utilized to the special advantage of any one coparcener more than that of any other, and that, if so used, it should accrue to the common benefit of all; but would seem to lie in the more or less liberal or conservative interpretations of the same text by different commentators and on the admixture of enlarged notions of equity manifested in Judicial decisions based on one or other of such interpretations.

3. However desirable the institution of such a uniform rule as is contemplated by the proposed legislation may be in the interests of the educated few, the scheme, while professing to revive the equitable and liberal law of the old Smritis, practically ignores *in toto* the commentaries, which in general have actually taken their places, are recognized as binding, some in one, some in other parts of India, and have been hitherto accepted as guide in all judicial decisions.

4. Even were it expedient so to disregard such commentaries, it is impossible to conceive how the terms of the Bill, by which gains made by reason of any kind of "education whether elementary, liberal technical or scientific and training of every kind which is usually intended to enable a person to follow any trade, profession or avocation in life" and acquired in whole or in part, with the aid wholly or partially of joint family funds, become the exclusive property of the acquirer, are in substantial accord with the original texts, which would never part with the fundamental principle above referred to, though some of the text writers concede a larger share to such gifted acquirer in consideration, probably, of the talent, intelligence and labour, which, perhaps, even more than patrimonial assistance, have contributed to the acquisition.

5. Such a radical character of the Bill is more likely to create further dissensions and misunderstandings than there are at present, than tend to promote cordiality of feeling so essential in aid of progress among members of joint families, to whose social usage the fabric of the joint family system is so well adapted.

6. Moreover, the ulterior object of the proposed measure of securing the gains to the personal heirs of the acquirer would be frustrated, unless the restrictions to which widows' rights are now subject were removed by a project probably involving revolutionizing one other branch of the Hindu Law.

From M.R.Ry. M. R. RAMAKRISHNA IYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Tiruchendúr, 12th January 1893.

I have the honour to submit the following on the Hindu Gains of Learning Bill.

There is a considerable amount of uncertainty in connection with this branch of the Hindu Law, and any measure that is calculated to minimize the litigation in respect

of acquisitions by learning, cannot but prove useful to the Hindu community. Towards the close of the Statement of Objects and Reasons, other cogent grounds have also been assigned by the Honorable Mover of the Bill and the force of many of them cannot be denied.

2. But the question is, whether it is necessary or even desirable that the Legislature should interfere in matters of this kind. This question is of far greater significance than would at first sight appear; for the measure proposed is much more than an authoritative interpretation of doubtful passages in Hindu Law—it is in fact an *alteration* or amendment (in form and in substance) of the Hindu Law as at present interpreted and understood.

3. We generally understand the original Hindu Law texts with the light thrown on them by the recognized commentaries, and without attempting to settle independently of these commentaries what the intention of the lawgivers was, it is enough to observe that almost all the recognized commentators (the author of the Mitakshara among them) are agreed, on the authority of the texts as interpreted by them, that acquisitions made by learning or science, where the same has been imparted at the expense of the joint family, are partible. This interpretation is only in conformity with the general principles connected with coparcenery, and the different High Courts have construed the law in the same way.

4. In this state of things the present Bill cannot but be regarded as an entire *alteration* of the existing Hindu Law on the subject, and as such is open to objection on general grounds.

5. Up to this time the Legislature has not materially interfered with the substantive law laid down by the Hindu lawgivers in regard to property, except perhaps in the two instances of Act XXI of 1850 relating to the inheritance of excommunicated persons, and Act XV of 1856 relating to widow marriages. These two exceptional cases stand on quite a different footing from the measure now proposed and are the natural result of the principle of individual liberty and religious toleration.

Such instances of legislation (including the Act for the abolition of slavery) have their foundation on much higher ground than what forms the basis of any particular system of law prevailing in any one country, and they are such that a Government like the British could not but have legislated sooner or later for settling the matters comprised therein.

The other pieces of legislation, such as the Indian Majority Act and portions of the Evidence Act and the like, do not affect the provisions of the Hindu Law in regard to the *rights* of persons as to property.

6. And the present Bill, if passed into law, would be the first instance of direct legislative interference with the existing Hindu Law.

7. I need hardly discuss the abstract proposition as to how extremely undesirable it would be for the Legislature to disturb the course of the existing law of the country, and I have only to observe here that we have to be more than ordinarily cautious when we remember that the institutions in which our legislators in general have been brought up are so different from the institutions of this country, and that even the principles of natural justice cannot be universally applied quite irrespective of the time-honoured institutions of a country and the accepted ideas and consciousness of the people.

Again when once we break through the existing law, there is no saying where we will stop. The Bill, if passed into law, would, I am afraid, form an *important precedent* for other alterations or amendments being sought to be effected in Hindu Law on some ground or other.

This is a state of things which would hardly be liked by the community in general, or even by the educated section thereof.

8. In regard to the present Bill, it has further to be observed that compelling a person to give his brother a share of the acquisitions by learning (which learning

has been imparted at the joint expense) is not contrary to any principle of natural justice or equity. Referring to the law on this point, the Bombay High Court observe:* "Nor having regard to the usage of Native Society do we think it is bad law." Mr. Mayne also observes:† "If a member of a joint Hindu family were sent to England, at the joint expense, to be educated for the Bar or the Civil Service, it seems *fair enough* that his extra gains should fall into the common stock as a recompense for the extra outlay incurred. It might be assumed that when the outlay was incurred the reimbursement was contemplated."

* *Vide* 6, B. H. C. R., A. C., p.p. 1 and 6.

† Mayne's Hindu Law, Fourth Edition, section 259.

9. The justice of this provision of Hindu Law follows directly from the general law of coparcenery. Since no member of a joint family can say before actual partition is made that he is entitled to any *definite share* either in the corpus of the whole family property or in its profits, the family is not bound to spend any portion of the property for the sole benefit of any one member; and when any large sum is actually spent in giving special education to an individual member, the sum must be considered to be spent on that person as a member of the corporate unity, and the earnings of that member ought therefore to go to the corporate body. And no member can reasonably complain of being deprived of the fruits of his learning, for were it not for the joint fund of the whole family, there would have been no learning to bear fruit. Again as a matter of fact no such educated member remains undivided during the whole of his life.

10. And besides, a consideration of the present circumstances of the country necessitate the continuance of the existing law, notwithstanding that he may suffer certain disadvantages thereby. The country is poor, and it is well known that by far the greater portion of the people who are anxious to impart good education to their children are also comparatively poor, while education is becoming costly and proper education for any special profession is felt to be far more costly. In this state of matters it is idle to expect the parents or other relatives to spend any large sum of money for the education of a boy, unless they can entertain the hope that by that means the prospects not only of the particular boy but of the family as a whole will be improved; and in many instances it would not be considered a prudent expenditure (even where the parents are willing to spend) unles the whole family hopes to be benefited.

11. Moreover, the boys have very often to look to the care and good sense of their uncles and elder brothers for guiding their education, and even where the boys may be themselves anxious to obtain proper education eventually to fit them for any profession, they are simply helpless as they have no independent voice in a joint family. And it is extremely unlikely that the uncles or brothers would be disposed to spend money knowing fully well (and they must know, if the Bill should become law) that the whole of the acquisitions by learning are to go exclusively to the earning member *from the very moment such earning should commence.*

12. But it is said that however reasonable and just the hopes and expectations of the other members may be, they are under the existing law liable to be frustrated by the person to whom the learning has been imparted choosing to become divided from his coparceners as soon as he completes his education, and thus to appropriate exclusively to himself the fruits of his learning. This is no doubt *a possibility*; but it seldom so happens in actual practice. It is in such cases more than in others that the educated member experiences feelings of delicacy, which together with moral and other considerations, including the public opinion (so to say) of his own circle, are too strong for him to press for a division at once. Experience shows that the educated member generally waits for a few years before demanding partition, and the acquisitions or gains of science made in the interim naturally go to the whole family.

13. Granting for the sake of argument that instances of the educated members dividing off immediately on completion of education may *hereafter* become more frequent, how does the Bill better the present condition of things? Under the existing law we can at least trust to the good sense and feelings of delicacy and affection of the earning member for giving the family the benefit of the acquisitions by postponing partition for a time; whereas the Bill declares that from *the very commencement* the acquisitions are the exclusive property of the earning member though remaining undivided. No scope is given for the operation of the feelings of delicacy, of moral duty or affection or the like. Under such circumstances even the sense of moral duty will become blunted in this respect, and it is highly improbable that an earning member will, out of mere gratitude, give, that is, make a gift of, a share to his coparcener in what the law expressly declares to be exclusively his own.

14. Hence the effect of the Bill would be this. Because the existing law is unable to compel a few persons who have received education to assign a share to the coparceners that assisted them with their funds, we will enact another law *practically* making all or nearly all the persons receiving such education *not to give* any portion of their earnings to their coparceners.

15. As for the argument that under the proposed law the member acquiring by means of learning will postpone partition out of certain family considerations and there will be no room for discord and mistrust, it loses much of its force when we remember that the *other members* in management of the family property would then be more tempted to conceal the savings, &c., and where the estate is one likely to be improved or enlarged by their exertions, such members would divide off their shares instead of spending their energy upon the whole estate and giving the benefit of the improvements and accretions to the educated brother who is earning abroad solely for himself.

In addition to these cases of partition being expedited, there might also be cases in which one coparcener will demand partition even at the very time at which a large expenditure is sought to be incurred for the education of another coparcener.

16. Coming to the different kinds of special education or science, we find that all of them do not stand on the same footing. As we have special education for the law or medicine we may also have special training for agriculture, commerce and the like. But these latter require the continued use of substantial property (in the shape of land or money) for the special training or science to bear fruit, while the professions of law and medicine require little capital. Again a member who has made mechanical engineering his special study might think of setting up a mechanic's shop as being more advantageous than seeking for service under some one else, and this business also requires capital. In these and similar instances it would be more beneficial to the persons concerned and to the country itself that the special knowledge and skill should be exercised on the property (land or capital) of the family itself than that those who have acquired such special knowledge and skill should work on the land or capital of other persons. Besides, while we are complaining of the want of sufficient capital and of the minute sub-division of lands into small holdings—holdings too small in fact to enable us to carry out any substantial improvements—it is highly necessary that the persons who have received special agricultural, commercial or mechanical education should have for the exercise of their knowledge and training, at least the *whole* of the property or capital the entire family can command, rather than that the member so educated should divide off his own share and work upon it.

17. Agricultural education, commercial education and in fact all kind of industrial education, are now recognized as being essential for the development and advancement of the country, and instances of such education are sure to become much more numerous than at present; and yet, it is such education that is placed at a considerable disadvantage by this Bill, as compared with the education for the law or the medicine. For, as already stated, those to whom the former kind of special education has been imparted have, under the present circumstances of the Hindu community, to utilize the family property for the operation of their knowledge, and whatever may

be the amount of special knowledge and skill that contribute to the acquisition, the utilization of the patrimony is enough to make the *whole acquisition* partible among the different coparceners.

18. This portion of the existing law is left entirely untouched by the present Bill, which, if passed into law, would produce an anamoly. Suppose in a joint family of two brothers, the senior studies for the medicine, while the junior receives special education in agriculture or mechanical engineering; and suppose Rs. 4,000 is spent on each of the brothers; the senior would be allowed to appropriate exclusively to himself all his earnings, while the junior who has devoted the whole of his industry, intelligence and special learning and has probably doubled in value the family lands or capital would be compelled to share the same with the senior brother.

The other alternative would be to compel the younger brother at once to divide off his share of the property or capital and work in a small and narrow scale or what is more likely, to seek for the property or capital of some one else to turn his special knowledge to account. None of these states of things is desirable; and it would therefore be better not to disturb the existing law under which *all* the brothers who have received special education of *whatever kind* at the joint expense, will share in each others earnings so long as they remain undivided.

19. Objection is taken to the existing law on the ground that when the earning member attempts to divide "the other members who expect to share in the earnings naturally thwart the attempt by offering a passive resistance more effectual than active resistance." This is true enough. But there are other cases in which similar difficulty is felt, and yet we do not think of proposing a remedy by legislation. When in a joint family a brother or an uncle having no issue or having only daughters wishes to settle property upon his wife or daughters, the other brothers or nephews often offer the same kind of passive resistance, and the brother or uncle wishing to divide to enable himself to alienate his share is driven to a suit for partition as much as the earning member aforesaid, though in the case of this uncle or brother, the other members of the family can have no claim of any kind on him.

20. The objection to the existing rule, namely, that "it intercepts the descent of the acquisitions to the personal heirs of the acquirer, that it precludes the acquirer from making a gift or will in respect of them and disables his personal creditors from pursuing the same" are not really so many different objections, but are only the different phases or aspects of the single conception that the acquisitions are not the exclusive property of the earning member while he remains a member of a joint family.

21. One important effect of this new legislation upon the community at large would, it is submitted, be to obstruct the progress of all higher education, general and special, involving any large expenditure. This must be apparent from the facts stated above in paragraphs 10 and 11. In practical life we do not find many instances in the Hindu community of any large outlay being incurred to educate a boy, because education is in itself good, or merely for the sole benefit of the boy himself. Hindu society as a whole is at present very far behind this stage. And for want of funds or other grounds the Government are endeavouring to withdraw their aid from higher education. It is desirable therefore that we do not by any fresh legislation disturb the existing state of things and take away the main inducement in regard to education. Otherwise the loss to the community would be too great. Not only would there be a much smaller number of educated men in society, but the number of persons making large or handsome earnings would be considerably reduced, and there would be but few individuals who could with their special training in agriculture, engineering, industrial arts and the like assist in the development of the country's resources, not to mention other consequences of more or less importance.

22. The chief point in favour of the Bill is the uncertainty, justly called the "distressing uncertainty," of the law in deciding the nature and character of the education imparted. The Mitakshara does not expressly refer to special education or science, but more than ordinary education is implied as the *substantial and proximate cause* of the earnings can in this respect be nothing less than special education or

science. While I fully perceive there is "distressing uncertainty" in determining the character of the education, I submit we need not necessarily adopt *the present Bill* for removing the evils of such uncertainty. It might be said that there has been uncertainty in other branches of the Hindu Law and yet we have been looking only to the decisions of the High Court and the Privy Council for the removal of the uncertainty. As an instance reference might be made to the law of adoption in regard to the questions as to who may be adopted, and whether any and what ceremony is essential to validate the adoption.

Similarly it might be argued that in the present instance it might perhaps be preferable to trust to a course of judicial decisions for settling what ought to be deemed special education or science in the existing conditions of the society rather than invoke the aid of legislation for the purpose. But here we have an important and unique feature which distinguishes the present case from all others. While the uncertainty in regard to any question of law could be removed generally by single authoritative decision, we would require *a series of such decisions* of the highest courts to settle what kind or character of education ought to be considered special and not ordinary, the question though nominally one being so varied in character and so comprehensive in its scope. But waiting for *a series of decisions* means waiting for a long number of years and allowing the country to suffer in the interim the evils ensuing from conflicting decisions of Mofussil Courts. I therefore beg leave to suggest that the aid of the Legislature may be invoked to define, as far as possible, what ought in the modern condition of society to be considered as general, ordinary or rudimentary education, and what education regarded as special, scientific or technical. The distinction between the two classes of education is in the majority of cases well marked, and in no case can it be said to be too vague to be judicially recognized. But in view of the difficulty likely to be experienced by Mofussil Judges in cases regarded as doubtful, the Legislature may declare, so far as it may be feasible, what education is to be regarded as special, scientific or technical so as to serve as the substantial and proximate cause for earning. It may declare, for instance, what classes "of legal practitioners ranging from Barrister-at-law to Second-grade Pleader" are to be considered as having received special education or training.

23. A Bill framed with the above object would in no way be an attempt to *alter* the existing Hindu Law as laid down in the original text or commentaries, but would merely be *an explanation* or *amplification* of its provisions on a matter on which the law is silent. Such a measure would in the language of the Bombay High Court be "only adapting the texts to the condition of modern Hindu society."

While the Bill now under consideration removes the uncertainty by altogether ignoring or abolishing the distinction between ordinary and special education, the measure above suggested would recognize the distinction and avoid the uncertainty by *defining* the two kinds of education and including the doubtful cases in one kind or the other. Such a measure would not be open to the objections already stated in reference to the present Bill.

24. If it should, however, be thought that such a measure is not at all feasible, we must remain content till *a course of decisions* of the highest tribunals should set the question at rest.

25. Even if the present Bill should become law, there is no reason why it should be made *retrospective in effect* by affecting the acquisitions of learning made prior to the passing of the law.

26. In conclusion I beg to summarise my views as follows:—

(1) The Bill is much more than an adaptation of the Hindu Law texts and commentaries to the condition of modern Hindu society, and is really *an alteration* of the existing Hindu Law on *Vidyadhanam*, as laid down by the Smriti writers and recognized commentators and as interpreted to us by the High Courts.

(2) On general grounds, it is not desirable that the Legislature should interfere with the course of the Hindu Law in regard to private property; and even if it should be conceded that such interference is permissible when rendered absolutely necessary by exceptional circumstances, such exceptional circumstances do not now exist.

(3) Not only the existing law seems reasonable in a community governed by the law of coparcenery (paragraphs 8 and 9), but a change in the law will, under the present circumstances of the country, materially obstruct the progress of all higher education, general and special, and hinder the advancement of the society and the development of the country's resources (paragraphs 10, 11 and 21).

(4) We cannot be sure that the change proposed will secure on the whole the prevalence of good feeling and postponement of partition among coparceners to a *greater extent* than we find at present (paragraphs 12 to 15).

(5) The Bill seems to favour only certain classes of special education, namely, education for the Bar, the Medicine, Civil Service and the like, and places at a disadvantage those kinds of special education and training such as education in commerce, agriculture and the industrial arts that are essential for the development of the country (paragraphs 16 to 18).

(6) There is a great deal of uncertainty in determining the nature and character of the education imparted, and the question being too varied in its aspects and too comprehensive in its scope to be settled authoritatively by two or three Judicial decisions, it is highly desirable that the Legislature should define and declare so far as it may be feasible, what ought in the modern condition of society to be considered as *general*, *ordinary* or *rudimentary* education and what education regarded as *special*, *scientific* or *technical*. Such a measure would remove the existing evils and leave the Hindu Law as it is.

(7) And even if the present Bill should become law, it ought not to be made to affect the acquisitions made *prior* to the passing thereof (paragraph 25).

From the Honorable Sir T. MUTTUSAMI Aiyar, K.C.I.E., to the Chief Secretary to Government, dated Madras, 17th January 1893.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following remarks on the Bill introduced by the Honorable Mr. Bhashyam Aiyangar relating to what are called in Hindu law gains of learning or science.

The educated classes consider the proposed legislation necessary and on this point there is a concensus of opinion amongst them. Even the orthodox section of the Hindu community are not much against it since what is proposed to be effected by legislation may now be secured by partition. Although a coparcener may not share with his co-heirs what he earns by his learning, yet he may often assist them in several other ways from family affection so long as he continues in the joint family. Whilst therefore, it is their interest that he should continue in the co-parcenery family, the present state of the law tends to force partition on him unless he is prepared to share with others the fruits of his learning. It is a rule of general jurisprudence that what one earns by his own unaided exertion is his exclusive property and the Hindu Law recognizes it except, as will presently appear, so far as it relates to gains of learning. Apart from these considerations it is to be observed that the law relating to gains of learning is a branch of the law of self-acquired property in a joint Hindu family. Whenever some property other than gains of learning is claimed to be self-acquired in a partition suit, we inquire whether the acquisition was made by the claimant by his own exertion or with his own earnings or whether his co-parceners assisted him or joint property was used in making the acquisition. In the one case we pronounce the property in dispute to be self-acquired and not partible and in the other we hold that it is joint and partible. But we do not inquire whether the acquirer or his wife was maintained in the joint family or from joint property when he made the acquisition nor do we treat any aid rendered to the acquirer material unless it is directly instrumental in acquiring the property and becomes thereby a joint cause of the acquisition. The proposed legislation, therefore, only places gains of learning on the same footing with other descriptions of self-acquired property.

I shall now proceed to consider on what foundation the Hindu Law rests so far as it relates to the conditions mentioned in section 3 of the Bill subject to which gains

of learning are now treated as separate property and whether it is expedient to repeal those conditions. The Smrities, the commentaries and the decisions bearing on the subject are cited by the Honourable Mr. Bhashyam Aiyangar in his speech in the Legislative Council and it is hardly necessary for me to recapitulate except for the purpose of indicating the conventional family notions embodied in them.

There are three classes of Smrities which bear on the subject and the first of them shows how the notion of self-acquired property attained development under Hindu Law. The modern joint Hindu family was once patriarchal in its type and the prevalent family notion was that the head of the family was the absolute owner of all that belonged to it, and that what each member of the family acquired by his own exertion belonged to its representative. In a Smriti attributed to Menu, the wife, the son and the slave are said to have in general no wealth of their own and what they acquire is declared to belong to the person to whom they belong. At this period no notion of self-acquired property was possible.

The patriarchal family, however, since ceased and the introduction of the law of partition changed it into the joint family. The first indulgence shown to the person who acquired property by his own exertion in such family is indicated by the text of Vasishta which says. "If one of the brothers acquires property by his own exertion, let him have a double share." The next change of the family notion is indicated by a Smriti attributed to Viyasa who states: "That brothers participate in that wealth which one of them gains by valour or the like, using common property such as a vehicle or weapon." At this time the family notion was that what a co-parcener acquired by valour was his exclusive property, but that the slightest assistance received from family property was sufficient to make it partible.

In consequence of the predilection felt in archaic times for the joint family, family property was guarded with extreme jealousy and it was even seriously discussed whether being nursed by a common mother and using a family plough rope was not sufficient aid from a family source. Another class of Smrities indicates a further stage of development. In the first paragraph of his text, Menu places property acquired by learning in the same category in which he places a gift from a friend and a present received on marriage, and in the second paragraph, he lays down the general principle in these terms: "What one brother may acquire by his labour without using the patrimony, that is an acquisition by his own effort and he shall not share it with his brothers except by his own choice". Yangyavalkya on whose Smriti the Mitakshara, which is the leading commentary in this Presidency, is based, expresses the same opinion and observes after referring to family property, "whatever else is acquired *apart from and without detriment to the paternal estate* as a friendly or nuptial present does not belong to the co-heirs. Nor shall he give up to his co-parceners what has been gained by science." It has been held upon the authority of these Smrities that the use of patrimony contemplated was a substantial use and one which was directly instrumental in the acquisition of the property. This is the furthest development which the law of self-acquired property has attained in a joint family and the Bill does not go beyond it.

There is another class of Smrities which it is necessary to mention in relation to gains of learning, viz., the texts of Catyayana, Narada, Brihaspati and Gautama. The text of Catyayana is full and it is sufficient to refer to it alone. Catyayana lays down three principles and first excludes what is gained by learning imparted in the family or acquired whilst being maintained by the family from the definition of gains of learning. The second principle is that what is gained by superior learning or superior skill or merit is separate property. The third principle is that a learned co-parcener need not share his gains by learning with his *unlearned* co-heirs. It is in this Smriti that the receipt of maintenance or instruction from the family is treated as making gains of learning partible property, but Catyayana limits that rule to ordinary gains by declaring that wealth gained by superior learning, merit or skill, is exclusive property and by making even the ordinary gains partible with other *learned* co-heirs only. From the instances he gives, he evidently refers to what was then considered among Brahmins to be special earnings of learning. Reading the Smriti in the light of usage which prevailed at that time, the text is clear and intelligible. Professions

were then hereditary under the rules of caste, and several brothers, living together and receiving instruction from their father or uncle or another brother, followed a common caste profession, treated what they earned by the ordinary exercise of the family profession as partible amongst them, but treated the special earnings mentioned in the Smriti as their exclusive property. It is apparently with reference to this usage that Catyayana made a distinction between ordinary and special earnings of learning and treated the latter as separate and the former as partible property. He declared the principles mentioned above applicable to all elegant and liberal arts and also to cases in which there was only an increase of price by superior skill. Thus, if an article was made to order, its ordinary price was considered partible because it was made with the aid of knowledge imparted in the family, whilst any excess price or reward given on account of superior skill in making it was declared to be separate property. This shows that what Catyayana intended to do was to declare all special earnings, whether due to superior learning or superior skill or merit to be separate property because such learning, skill or merit was in his opinion personal and to declare in deference to the usage all ordinary earnings due to the exercise of the common caste or family profession partible, unless the learning necessary to the exercise of that profession was imparted and maintenance was provided by a stranger as was occasionally the case. The Bill purports to acknowledge the first rule and to repeal the second and the usage on which the second rule was founded has now undergone a considerable change. Professions are no longer hereditary as was formerly the case and the influence of caste in this respect has passed away except perhaps among artisans and mechanics. Even amongst them the proposed legislation will not be unpopular since they generally work separately when there is considerable inequality in their earnings. In an orthodox Brahmin family, different brothers now follow different professions and there is a considerable disproportion between their earnings. This renders a rule originally applied to the ordinary earnings of the profession prescribed for each caste inapplicable to the altered state of things. Testing the Bill by the Smritie-, I come to the conclusion that the proposed legislation proceeds on the lines indicated by the Smrities, adapting them to the altered conditions of life and that so far as the Bill repeals the limitations mentioned in section 3, it repeals only such Smrities as are probably referable to a period, when owing to the strong predilection for joint family, even slight aid from the family or its funds was considered sufficient to make gains of learning partible. The Bill proceeds also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *v.* Poliem Suria Chetty that the proposition of Hindu Law put forward before their Lordships was startling and that in plain terms, it amounted to this, that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property.

Though this is only a dictum of the Privy Council and though the Judicial Committee did not consider it necessary in the case before them to examine the texts, yet it shows how the second rule of Catyayana now operates in practice. It must, however, be stated that there is some authority for the proposition animadverted upon by the Privy Council in the Mitakshara. In chapter I, section IV, v. 8, the author relies on the texts of Narada and Catyayana and adopts the rule of Catyayana that unless wealth is gained by science which was acquired from a stranger while receiving a foreign maintenance, it is not an acquisition through learning. It was this passage in the Mitakshara and the Smrities mentioned therein on which the decisions in Madras and Bombay had rested prior to the date of the Privy Council decision. I have, however, explained that this rule originally had reference to those cases in which the gains of learning were ordinary and acquired in the exercise of the prescribed caste profession, no superior learning, skill or merit being the cause of the acquisition. The author of the Mitakshara himself refers in support of his opinion to "received practice." The Bill then, so far as it departs from the Mitakshara, refuses only to give effect to a rule, which, as applied to the altered present state of things, is characterized by the Judicial Committee as a *startling* proposition of law.

In the cases decided by the Bombay High Court and the Madras High Court subsequent to the decision of the Privy Council, it has been ruled that mere rudimentary or ordinary education imparted at the expense of the family cannot render what

was acquired by learning by one of them partible and thus effect has been given to the observation of the Privy Council. The decision of the Bombay High Court, however, indicates a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu Law. What Catyayana says is that the ordinary gains of learning are *partible* when the learning is imparted in the family or maintenance is provided at the family expense, whereas what the Courts hold in deference to the dictum of the Privy Council which embodies a rule of reason rather than the conventional notion of the Hindu Law, is that such gains are *separate* property. Again Catyayana says that special gains by superior learning, superior skill or superior merit are separate property; but there are observations in the decision of the Bombay High Court which indicate an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter *prtible*. There is therefore ground for the assertion that the tendency of the decisions of Courts is to proceed in a direction which is the very reverse of what is indicated by the Smriti of Catyayana and to make the law more complex in its application.

The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning, by bringing it into accord with the general law of self-acquired property in a joint Hindu family without at the same time doing violence to the spirit of Catyayana Smriti, but only adapting it to the altered state of things.

Order—No. 13, Legislative, dated 22nd February 1893.

The replies received from the various gentlemen consulted and certain petitions concerning the Bill which have been received by Government will be referred to the Honourable V. Bhashyam Aiyangar, Rai Bahadur, with the request that he will favour Government with such remarks upon them as he considers necessary.

(True Extract.)

A. BUTTERWORTH,
Ag. Under Secretary.

To the Honourable V. Bhashyam Aiyangar, Rai Bahadur.

Read—also the following paper:—

From the Hon'ble V. BHASHYAM AIYANGAR, to the Assistant Secretary to Government, Legislative Department, dated Madras, 6th January 1896.

I have the honour to acknowledge receipt of Proceedings of Government, No. 13, Legislative, dated 22nd February 1893, and to submit the following remarks on the replies received from the various gentlemen consulted and certain petitions concerning the Gains of Learning Bill. The names of the gentlemen and associations that are in favour of the Bill, as well as of those who either are opposed to the Bill or deem it unnecessary, are given below:—

For the Bill.

	Pages of the Procs. of Govt.
(1) The late Justice Sir T. Muthusawmy Iyer, High Court Judge, Madras	55 to 58
(2) The Hon'ble Justice S. Subrahmania Iyer, C.I.E., High Court Judge, Madras	24
(3) Sir K. Seshadri Iyer, Dewan of Mysore	45 & 46
(4) Dewan Bahadur R. Raghunatha Rao, late Dewan of Indore and retired Deputy Collector, Madras	9
(5) The Hon'ble Dewan Bahadur S. Srinivasa Raghavaiyangar, C.I.E., Inspector-General of Registration, Madras ..	16
(6) Dewan Bahadur T. Venkasamy Rao, retired First Assistant, Revenue Secretariat	15

		Pages of the Procs. of Govt.
(7)	The late Rao Bahadur P. Runganadha Mudelliar, M.A., Professor, Presidency College, Madras	48 & 49
(8)	M.R.Ry. A. Ramachandra Iyer, Judge, Chief Court, Mysore.	27 & 28
(9)	Rao Bahadur S. Seshayya, Professor, Kumbakónam College, and Tamil Translator to Government	46 & 47
(10)	Rao Bahadur R. Rama Subba Iyer, High Court Vakil, Madura	48
(11)	Rao Bahadur C. Gopala Nayar, Subordinate Judge	28 & 29
(12)	M.R.Ry. P. Somasundaram Chettiyar, late President, Pachaiyappa's Board of Trustees	8
(13)	M.R.Ry. K. C. Manavedan Raja, Statutory Civil Service ..	15 & 16
(14)	Dewan Bahadur R. Dhurma Rao Naidu Garu, Deputy Commissioner, Salt and Abkári, Northern Division	25
(15)	M.R.Ry. Rama Varma Raja, Raja of Parapanad	8
(16)	„ S. Gopalacharriar, Subordinate Judge	12 & 13
(17)	„ D. V. Ramayya Pantulu Garu, Government Pleader, Berhampur	18 & 19
(18)	„ C. Sury Iyer, retired Subordinate Judge	19 & 20
(19)	„ V. Jagannatha Rao Pantulu Garu, Deputy Collector	21 & 22
(20)	„ V. Rajagopala Charriar, Deputy Collector ..	30 to 32
(21)	„ S. Kalyanasundaram Chettyar, Deputy Collector ..	32 & 33
(22)	„ T. Pattabhi Rama Pillai, retired Deputy Collector.	33 to 35
(23)	„ V. Srinivasacharlu, Subordinate Judge	35 & 36
(24)	„ S. Narayanaswami Chettyar, Dewan of Venkatagiri Samasthanam	36 & 37
(25)	„ M. Srinivasa Rao, Deputy Collector	37 to 39
(26)	„ M. V. Sundara Rao, Subordinate Judge	39 & 40
(27)	„ K. P. Sankara Menon, High Court Vakil, Madras.	40 & 41
(28)	Citizens of Madras	3 & 4
(29)	Literary Association, Cocanada	1
(30)	Berhampur Association	2
(31)	Coimbatore Bar Association	3

Against or not in favour of the Bill.

(1)	M.R.Ry. P. Chentsal Rao Pantulu Garu C.I.E., retired Superintendent of Stamps, Madras, and late Councillor of the Council of the Maharaja of Mysore	25 to 27
(2)	„ A. Seshiah Sastriar, C.S.I., Retired Dewan of Travancore and Dewan-Regent of Pudukkóttai ..	37
(3)	„ C. Ramachandra Iyer, retired District Judge ..	29 & 30
(4)	Raja G. N. Gajapathi Rao, C.I.E.	41 & 42
(5)	Dewan Bahadur P. Srinivasa Rao, Judge, City Civil Court, Madras	43 to 45
(6)	Rai Bahadur A. Sabapathy Mudelliar, Bellary	47
(7)	Rai Bahadur P. Ramasamy Chettyar, Revenue Officer, Madras Municipality	49
(8)	The Hon'ble N. Subba Rao Pantulu Garu, High Court Vakil, Rajahmundry	48
(9)	M.R.Ry. A. Sankariah, retired Dewan Peishcar, Cochin ..	1
(10)	„ K. Krishnaswamy Rao, Chief Judge, Travancore..	9
(11)	„ C. Nagoji Rao, Inspector of Schools of Rajahmundry	9 & 10
(12)	„ P. Pundarikkashudu Garu, Deputy Collector ..	11 & 12
(13)	„ K. Subba Rao Pantulu Garu, Deputy Collector ..	13 & 14
(14)	„ Rao Bahadur C. Venkoba Charriar, Subordinate Judge	20 & 21
(15)	„ R. Subramania Iyer, District Registrar	22 to 24
(16)	„ A. Venkata Ramana Pai, Subordinate Judge ..	42
(17)	„ M. R. Ramakrishna Iyer, High Court Vakil, Tinnevelly	49 to 55

It will be observed that twenty-seven gentlemen and four associations support the Bill and seventeen gentlemen oppose the same or do not support it. In the Statement of Objects and Reasons appended to the Bill, as well as in my speech while introducing

the Bill, I have fully explained the Smriti law as well as the case law on the topic of gains of learning and showed how impracticable it would be to decide, in each particular case as it arises, whether the education by means of which property was acquired by a Hindu was ordinary or scientific, and how problematical it would be to decide in the great majority of cases, years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the proposed measure is in conformity with the Smriti or original sacred law on the subject, and that its primary object is to remove the existing uncertainty in the application of this branch of Hindu law. I beg to invite special attention to the opinion on the Bill recorded by the late Sir T. Muthuswamy Iyer. He points out that according to some of the original Smritis, the use of patrimony contemplated for the acquisition of learning was a substantial use and one which was directly instrumental in the acquisition of property. Referring to the text of Catyayana, he points out that gains of ordinary learning imparted in the family or acquired whilst being maintained in the family are partible, but that what is acquired by means of superior learning or superior skill or merit is separate or exclusive property of the acquirer, because such learning, skill or merit was, in the opinion of Catyayana, personal. Testing the Bill by the Smritis, Sir T. Muthuswamy Iyer says that it proceeds on the lines indicated by the Smritis, adapting them to the altered conditions of life, and also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *v.* Poliem Suria Chetty, that the proposition of Hindu law put forward before their Lordships was startling, and that in plain terms it amounted to saying that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring, by his own skill and industry, any separate property; and the Bill, so far as it departs from the Mitakshara, refuses only to give effect to a rule which, as applied to the altered state of things, is characterized by the Judicial Committee as a startling proposition of law. The observation of the Privy Council in the above case is only an *obiter dictum*, though effect has been given to the same, to a certain extent, in one or two subsequent decisions, by the Bombay and the Madras High Courts. Referring to these decisions, and particularly to the decisions of the Bombay High Court, Sir T. Muthuswamy Iyer observes that they indicate a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu law, and an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter partible and thus to proceed in a direction which is the very reverse of what is indicated in the Smriti of Catyayana and to make the law more complex in its application. In conclusion, Sir T. Muthuswamy Iyer says as follows :—

"The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning by bringing it into accord with the general law of self-acquired property in a joint Hindu family, without, at the same time, doing violence to the spirit of the Catyayana Smriti, but only adapting it to the altered state of things."

It will thus be seen that, according to the texts of Hindu law, the preponderance of authority is that the gains of ordinary learning is partible, but that the gains of superior or scientific learning are separate and impartible. This, in fact, was the view taken by the High Court (Holloway and Kindersley, J.J.) in the case reported in VII Madras High Court Reports, page 47 ; but the tendency of the later decisions is just the reverse, viz., that the gains of ordinary learning are impartible but that the gains of superior or scientific learning are partible. Considering, however, that the question has not yet been judicially considered by the Privy Council, it cannot be said to be unlikely, having regard to the texts of Hindu law, that the contrary view might hereafter prevail. This only shows how uncertain the present state of the law is on a question of the highest practical importance to Hindu families, and I may observe that the opinion of several who are opposed to the Bill proceeds on a misapprehension of the written law and of the case law on the subject. It is unnecessary that I should repeat here the reasons and objects of the Bill, which were fully stated and explained when the Bill was introduced, or the reasons assigned

in support of the Bill by the gentlemen and associations that are in favour of the Bill, and I shall confine my remarks to the specific objections that have been raised to the Bill by some of the gentlemen to whom it had been referred for opinion. These objections may be summarised as follows :—

(i) That legislation on questions of Hindu law is objectionable and undesirable.

(ii) That the existing law provides a remedy by enabling any member of an undivided Hindu family to become divided if he be disposed to do so, and that the proposed legislation is unnecessary.

(iii) That heads of joint Hindu families will neglect the higher education of their minor brethren.

(iv) That the measure will lead to the breaking up of joint Hindu families.

(i) As regards the first objection, I have only to refer to the note appended to my letter, dated 2nd May 1892 (printed at pages 5 to 8 of the Proceedings of Government under reply), in which I have expressed my views on the question as to the direction which legislation should take in matters of Hindu law and on the advantages and desirability of piece-meal legislation from time to time on different topics of Hindu law which are of the gravest practical importance and which, owing to their vagueness and uncertainty, open a wide door to unnecessary speculative and ruinous litigation, and that, having regard to different schools of Hindu law which prevail in different provinces and the difference in the conditions and sentiments of Hindu society in various provinces, provincial legislation is the only scheme which will be found practicable for the present and until a general codification of the Hindu civil law, with special chapters for special provinces, is found feasible.

(ii) The second objection is based on the provision of the Hindu law that any member of an undivided Hindu family may, as of right, become divided from the rest of the family, and that, by the exercise of such right, all acquisitions made by him after his separation from the family will become his exclusive and separate property. In cases in which all the members of the family voluntarily agree to all, or some, or one of them becoming divided, there will be no difficulty in one availing himself of the remedy. But in the very case in question—viz., of an earning member desiring to become divided—it will be the interest of the remaining members to obstruct and passively resist such a member from separating himself from the rest of the family : and the supposed remedy can be availed of only by an expensive and protracted law suit for a partition, until the final termination of which the status of the family as undivided will continue. A rule of law which is to be regarded as providing such a remedy can only have a tendency to force a member of a Hindu family to become divided, when otherwise he may deem it undesirable to do so. An earning member so long as he continues in the joint family and is not forced to become divided will materially assist the other members of the family in various ways, although they may not be entitled to claim a share in what he earns by his learning. If a choice were given to Hindu families between an earning member of that family becoming divided and his remaining a member of the family having exclusive right to his own earnings by learning, undoubtedly the option will invariably be exercised in favour of the latter. In this connection I may observe that the relative position between a Hindu father and his undivided sons is the same as that between undivided brothers, cousins, uncles and nephews, &c. ; and if a Hindu father wishes to have full control over his professional earnings and not be at the mercy of his sons in disposing of the same in favour of his wife, daughters or other relations, he should become divided from each of his sons soon after their birth. In truth, the supposed remedy is only a theoretical one and is worse than the disease, and, such as it is, it would be availed of more than it has been if there was any certainty or definiteness in the law that earnings by means of learning are partible. I may in conclusion add that, in the case of Malabar tarwads, even such a theoretical remedy does not exist.

(iii) The objection on the score that the proposed measure is calculated to affect prejudicially the cause of higher education in Hindu families is ingenious and fanciful, rather than real. It is admitted that, under the existing state of the law, a Hindu youth who has acquired superior and professional learning at a considerable cost to the joint family may separate himself from such family soon after he begins

to earn by means of such learning, and yet such law has in no way deterred heads of joint families from educating at a great cost to the family, up to a high standard, such of the junior members as show an aptitude for such superior or scientific learning. If, under the existing law, earnings by means of ordinary or rudimentary learning are not partible, but belong exclusively to the acquirer, it may be with just as much force argued that the tendency of the recent decisions is to affect prejudicially the cause of primary or elementary education in Hindu families. Such reasoning, whether in the case of elementary or higher education, proceeds on the assumption that heads of families are actuated by a mercantile spirit in spending family funds for the education of junior members. Every family will feel proud of one of its members attaining eminence in any walk of life and the whole family will, in the vast majority of cases, be benefited in various ways by the success in life of one of its members, though they may not be entitled to claim a share or an equal share in the earnings of such member. It is a libel on human nature to suppose that in domestic and family relations, men are chiefly actuated by mercenary and sordid motives. In countries where the joint family system of the Hindus does not prevail, parents, brothers and other close relations are found generous enough, at a great cost to themselves, to secure the highest education possible to their children and other relations, though they do not dream of claiming any share in the acquisitions resulting from such learning ; and is it to be imagined that among Hindus, domestic affection and generous impulses towards members of their families are less strong than in other nations ?

(iv) The last objection to be noticed is, that the measure is likely to lead to the breaking up of joint families. If that will be its effect, I know there are some who will welcome such a result. But, for my own part, I may state without hesitation that I am not prepared in the present state of the Hindu society to suggest or advocate any measure which would in any way be calculated to cause disintegration of the joint family system. Apart from what may be urged *pro* and *con* on such a question on economic and other grounds, it is enough to say that such a change will, at present, be revolutionary and out of the question. The existing system of joint Hindu families admits of, and has for ages admitted of, individual members thereof possessing self-acquired property which, being his separate and exclusive property, can be dealt with as he pleases, and which, in the event of his dying intestate, does not merge in the joint property of the family (except in the case of Malabar tarwads) but devolves by inheritance upon his separate heirs. The Bill introduces no change whatever in the joint family system and it only declares and defines one class of self-acquisitions, viz., acquisitions by means of learning. How this measure can in the least produce the apprehended result of breaking up the joint family system surpasses one's comprehension ! If anything, it will have just the opposite effect, by not forcing a member of an undivided family who, by his learning, earns a great deal more than the other members, to break up the joint family and become divided in order that his future earnings may belong to him exclusively.

It is impossible to conceive any case in which a person, who, under the existing state of the law, would be content or elect to remain a member of a joint Hindu family, would be induced by the proposed measure to become divided from such family. On the contrary, I can well conceive of several cases in which a person who may, under the existing state of the law, be forced to break up the joint family and become divided if he wishes to have sole control over his acquisitions, would, under the proposed measure, not be obliged to take such a step, but might well be content or elect to remain a member of the joint family, in cases in which there may be hardly any patrimony to be divided, or the property to be divided may be very small, or for other reasons, the breaking up of the family may be undesirable. One or two objecting to the Bill do so on the ground that it does not go far enough and is restricted only to acquisitions by means of learning. In the first place, I may observe that the word "Learning" is defined in the Bill in its most comprehensive and enlarged sense, so as to include, not only the learned professions, but also all arts and professions, however humble they may be. As to other acquisitions, they must be the result of manual labour, or the combined result of manual labour and patrimony, or of professional skill or learning and patrimony. As to acquisitions by means solely of manual labour

they are recognized as self-acquisitions by the Hindu law and no change, therefore, is needed in regard to it. Other acquisitions of which the proximate cause is not merely manual labour or professional skill and learning but patrimony also in a substantial degree do not form under the Hindu law self-acquisition, but partake of the character of patrimony. The Bill does not propose to alter this. Even if any alteration of the law in this respect were desirable, it will be a distinct departure from the Hindu law, and effect cannot be given to it without practically destroying the joint family system, nor will it be practicable to make an equitable apportionment of such an acquisition or improvement of the patrimony and ascertain what proportion thereof should be credited to patrimony and what proportion to labour, skill or learning. The Bill proceeds on the principle that the proximate cause, and not the remote cause, of the acquisition should be looked to in determining the character of the acquisition, and that any distinction which may be made, on the score of the learning being ordinary or special and scientific, is not only impracticable but one which may lead to opposite conclusions, according as you view it from the standpoint of the fund which was instrumental in securing education, or of the special and personal aptitude of the member who was benefited by the superior or scientific learning. The personal law of a nation, in its bearing on domestic and family relations, should be such as to ensure honesty and fair dealing at home, but if the law, owing to its obscurity and uncertainty or any fault therein, is such that honesty does not begin at home, the sooner it is changed the better will it be for the development of the character of the nation as citizens. In the note appended to my letter already referred to, I suggested the desirability of referring the Bill to the Hon'ble the Judges of the High Court for an expression of their opinions, besides inviting the opinions of leading native gentlemen in the Presidency. But in the Proceedings of Government under reply, the opinions of native gentlemen to whom the Bill was referred for remarks, and the memorials of certain bodies and associations, are alone printed.

Order—No. 14, Legislative, dated 16th February 1897.

The foregoing papers relate to the Hindu Gains of Learning Bill, a Bill to declare the gains of learning by a Hindu to be his separate property, which the Hon'ble V. Bhashyam Aiyangar, an unofficial additional member of the Madras Legislative Council, obtained leave to introduce at the meeting of the Council held on the 24th February 1891. The Bill was published in the Gazette so long ago as 1891 in the vernaculars of the Presidency without however eliciting from those affected by the measure any remarks which would enable the Government to ~~learn~~ the feelings entertained by the Hindu community regarding the principles of the Bill. To attain this end the Government accordingly adopted the only course that appeared to be practicable, of consulting individually those known to be among the leading members of that community. The papers read above embody the opinions thus procured together with the further observations thereon of the Hon'ble Bhashyam Aiyangar who was given an opportunity of perusing them as well as some other opinions independently submitted including a memorial purporting to be from "the citizens of Madras" on the subject of the Bill.

2. Weighty opinions have been expressed both in favour of and against the measure. The main arguments on either side may be briefly summarized.

Against the Bill it is urged—

(1) That it is anomalous to treat the gains of learning in a different manner from the gains of trade;

(2) That the Bill is likely to prejudice the education of the younger members of joint families inasmuch as the manager being debarred from a share in the gains of their learning will have no inducement to give them a liberal education;

(3) That the measure is unpopular with Hindus in general;

(4) That the Bill is unnecessary because the educated members of a family can always secure partition if they wish to enjoy their earnings separately;

(5) That the Bill strikes a blow at the joint family system;

(6) That the Bill is one which is equally applicable to Hindus living in other provinces and should, therefore, be taken into consideration by the Supreme Legislative Council;

(7) That the provisions of the Bill are inconsistent with the Hindu religion.

On the other hand in favour of the Bill it is urged—

(1) That the Bill will remove the existing uncertainty of the law which promotes litigation and disturbs the harmony of joint families and has a tendency to force a learned member to become divided or to conceal acquisitions made by him or to invest them benami when otherwise he might be willing to leave the ancestral property intact for the common benefit of the family;

(2) That it will tend to foster a spirit of individual enterprise and self-reliance securing the fruits of his individual efforts to the acquirer and stimulating other members of the family to support themselves;

(3) That it will tend to raise the credit and status of the educated members of the community;

(4) That the gains of special learning have become trifling now that education is widespread and are the result rather of natural ability and industry than of actual education;

(5) That it is impracticable to lay down distinctions between ordinary and extraordinary learning as contemplated in the rulings of the courts;

(6) That the existing rule places a premium upon idleness during the time of education;

(7) That the rule that the savings of a learned member of a family are liable to partititon tends to make him extravagant or to promote resort to fraudulent concealment of his earnings;

(8) That the provisions of the Bill coincide with the law as laid down in the Smritis;

(9) That the provisions of the Bill coincide with what is already accepted as the customary law among Marumakkatayam and Aliyasantana people in the districts of Malabar and South Canara;

(10) That the Bill will pave the way for the codification of Hindu law and remove the idea that such law is not subject to legislative control;

(11) That the Bill is desirable as it places the gains of learning only on the same footing with other self-acquired property.

3. Without entering here into a detailed criticism of these arguments the Government will merely state that ~~the conclusion at which~~ it has arrived is that the balance of argument inclines to the side of the large body of learning and intelligence which favours the Bill. Those who take an adverse view do not, it appears to the Government, press their opinions strongly and they do not allege that the Bill will do any positive harm to the Hindu religion. His Excellency in Council believes that the measure, if passed into law, will on the whole tend to abate practical abuses and inconveniences which ought to be remedied in order to open the way for wholesome social progress.

4. Two questions have been raised with reference to the Bill: (1) whether the Bill should be introduced into and proceeded with in the local Legislative Council, or is a measure which may more appropriately be dealt with in the Supreme Legislative Council; and (2) whether the provisions of the Bill affect the Hindu religion, or the religious rites and usages of the Hindus and as such require the sanction of the Governor-General under section 43 (5) of the Indian Councils Act, 1861.

5. As regards the first question His Excellency the Governor in Council is advised that the Hindu law as to gains of learning differs in Madras in several material respects from the law in Bengal and other provinces, and accordingly sees no objection to the progress of the Bill in the local Legislative Council.

As regards the second question, the Bill, so far as His Excellency the Governor in Council is in a position to judge, cannot properly be held to contain anything which affects the Hindu religion, or the religious rites and usages of the Hindus within the intention of the statute, and His Excellency the Governor in Council therefore considers that there is no obligation to obtain the previous sanction of the Governor-General. The Government of India will however be addressed on this point and on the subject matter of the Bill generally, and until the views of the Governor-General in Council are ascertained the author of the Bill will be requested to defer its further progress.

[Here enter Letter No. 15, Legislative, dated 16th February 1897.]

(True Extract.)

Secretary to Government.

To the Hon'ble V. Bhashyam Aiyangar, C.I.E., Diwan Bahadur.

Government {1897} of Madras.

LEGISLATIVE.

Recd. } 1897. *Enclosures*

Regd. } *Spare copies*

Letter, &c., Nos. 15, 16, 16th February 1897.

FEBRUARY.

Hindu Gains of Learning Bill.

Sketch Expressing the views of this Government in regard to the introduction of the — into the Madras Legislative Council, and requesting that, if necessary, the sanction of His Excellency the Governor-General, required under section 43 (5) of the Indian Councils Act, 1861, may be accorded.

LEGISLATIVE DEPARTMENT.

Letter—from

The Secretary to the Government of
Fort St. George,

To

The Secretary to the Government of India,
Legislative Department.

Sir,

In continuation of the correspondence noted on the margin, * I am directed to address you on the subject of the Hindu Gains of Learning Bill.

* Letter from the Government of India, No. 1456, Legislative, dated 24th August 1891.
Letter from the Government of India, No. 519, Legislative, dated 8th March 1893.
Letter to the Government of India, No. 22, Legislative, dated 17th March 1893.

2. The Honourable V. Bhashyam Aiyangar, an un-official additional member of the Madras Legislative Council, obtained leave to introduce the Bill at the meeting of the Council held on the 24th February 1891, and the Bill was published in English in the *Fort St. George Gazette* of the 10th March 1891 and in the Tamil, Telugu, Malayalam and Canarese vernaculars in the *Fort St. George Gazette* of the 26th and 19th May, 16th June and 21st April, respectively, of the same year.

3. A copy of the Bill was in due course transmitted to Her Majesty's Secretary of State for India. Lord Cross' despatch, † in reply, indicated two points on which it was desirable to have an assurance before the Bill was further proceeded with in the Madras Legislature—

† Despatch No. 2, Legislative, dated 25th June 1891, to the Government of Madras.

(1) Whether the opinion of the Hindu community at large on the measure had been ascertained, especially the views of those most interested in the changes contemplated by the Bill; and

(2) Whether the sanction of His Excellency the Governor-General under section 43 of Statute 24 and 25 Victoria, Cap. 67, was not necessary since the proposed measure involved the alteration of a law which the persons affected by it may regard as part of their religious code.

4. The steps that have been taken to elicit the views of the Hindu community regarding the principles of this important measure are set out in the Proceedings of this Government, No. 14, a copy of which accompanies this letter. The Proceedings also embody the opinions recorded by those consulted and others.

These opinions and the whole question have now been carefully considered by His Excellency the Governor in Council.

5. In the note ‡ attached to his letter of the 2nd May 1892 the Hon'ble V. Bhashyam Aiyangar makes certain general observations as to the direction which legislation may profitably take in the matter of Hindu law. These observations appear to His Excellency the Governor in Council to throw out a new line of thought deserving of careful reflection. The Hon'ble Bhashyam Aiyangar considers

‡ Printed in G.O., No. 13, Legislative, dated 22nd February 1893.

that it is the duty of the legislature to advance the Hindu law and adapt it to the conditions and sentiments of modern Hindu society, without, of course, doing violence to any of its fundamental or leading doctrines; he calls attention to the mass of litigation which arises out of Hindu family law, owing to the obscurity of that law or to changes in Hindu society and the growth of new ideas and rights; and he believes that legislation will take a very beneficial course if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of grave and practical importance. He adds that at the commencement and for a considerable time, legislation in matters of Hindu law can only be fragmentary, but that this has its advantages, and that such process of legislation may eventually form a sound basis for the codification of the Hindu law. These views, I am to observe, have generally much impressed this Government. Without committing itself to the particular view that the codification of the Hindu law is an end necessarily to be kept in sight—indeed while admitting a possible danger in premature or hasty codification—this Government believes that it is by means of partial legislation, of which the present Bill may serve as an example, that the Hindu law, so far as it can be so adapted consistently with retaining its cardinal principles, can best be made to conform to the advancing needs of the Hindu community; and that the efforts of enlightened members of that community in this direction are therefore entitled to the friendly encouragement or assistance of the Government.

6. So far as the present Bill is concerned, His Excellency in Council, after having carefully considered the arguments adduced for and against it, considers that the balance of argument inclines to the side of those who are in favour of it. The Bill, His Excellency in Council observes, is supported by a large body of learning and intelligence and is calculated to abate practical abuses and inconveniences that ought to be remedied in order to open the way for wholesome social progress, and though there are doubtless objections to the measure, they do not appear to be insuperable. Even those who regard the measure adversely do not seem to oppose it very strongly, while they do not allege that it will do any positive harm to the Hindu religion. The fact that no petitions deprecating the measure were received when the Bill was published in the several vernaculars in 1891 may also be accepted as some evidence that orthodox Hindus are generally indifferent to the legislation contemplated and are not likely to raise any clamour against it. His Excellency the Governor in Council has accordingly come to the conclusion that the measure should be allowed to take its natural course without opposition on the part of this Government.

7. Two points remain for consideration. The *first* is, whether the Bill should be proceeded with in the Local or in the Supreme Legislative Council. The Secretary of State speaks of the measure in paragraph 2 of his despatch quoted above, as "relating to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India." It is therefore a question whether the Bill does not embody principles which are equally applicable to Hindus living in other parts of British India and should therefore be taken into consideration by the Supreme Legislative Council. The Hon'ble V. Bhashyam Aiyangar in his note of 2nd May 1892 already referred to, while he has no objection to the introduction of the measure into the Council of the Governor-General, if the Government of India should consider such a course necessary, points out that the Bombay Hindu Heirs Relief Act VII of 1866 is an instance of legislation on a general point of Hindu law by a local legislature. Moreover the current of legal decisions as set out in the Statement of Objects and Reasons attached to the Bill so far as this Presidency is concerned, is to this effect, that acquisitions by means of learning imparted at the family expense constitute the separate property of the acquirer if the learning is of an ordinary description, but form part of the family property if the learning is special or extraordinary. This state of the law, as this Government is advised, differs from that prevailing in Bengal and other provinces; and His Excellency in Council is therefore of opinion that the present Bill may appropriately be dealt with by the local legislature.

8. The *second* point is, whether, under section 43 (5) of the Indian Councils Act, 1861, 24 and 25 Victoria, Cap. 67, the sanction of His Excellency the Governor-General

is necessary for proceeding with the Bill. On this it is argued by some that although strictly speaking the measure affects the Hindu law and not the Hindu religion, the Hindu law itself is mainly founded upon religious principles, its propounders being influenced more by spiritual than secular considerations, and that therefore any enactment which modifies the traditional law is at variance with the religious principles on which it is based. On the other hand it is contended that this line of argument is far fetched and that the measure cannot properly be held to affect the Hindu religion within the intention of the statute. His Excellency in Council concurs in the latter view. If, however, the Government of India is disposed to take the other view, I am to request that His Excellency the Governor-General may be moved to accord the sanction required by the statute for the introduction of the measure into the Madras Legislative Council.

9. A copy of this letter, together with its enclosures, will be forwarded for the information of Her Majesty's Secretary of State for India.

I have the honour to be,
Sir,
Your most obedient servant,

Fort St. George,
16*th February* 1897.

G. S. FORBES,
Secretary to Government.

Endorsement—No. 16, Legislative, dated 16th February 1897.

Copy to the Government of India, Home Department, with enclosures.

Secretary to Government.

Exd. C. M. Thumbuswamy.

GOVERNMENT OF FORT ST. GEORGE.

LEGISLATIVE (1897) *DEPARTMENT.*

Letter to the Right Honourable the Secretary of State for India.

Dated February,
No. of 1897.

Forwarding, with remarks, for information, copies of Proceedings of this Government, Nos. 14 & 16 on the subject of the Hindu Gains of Learning Bill.

Legislative dt 16 February 1897

LEGISLATIVE DEPARTMENT.

Letter—to

The Right Honourable the SECRETARY of STATE for INDIA.

My Lord,

With reference to Lord Cross' despatch, No. 2, Legislative, dated 25th June 1891, and in continuation of our despatch, No. 3, Legislative, dated 10th April 1891, we have the honour to forward, for your Lordship's information, a copy of the Proceedings of this Government, No. 14, Legislative, dated 16th February 1897, together with a copy of the letter addressed to the Government of India, on the subject of the Hindu Gains of Learning Bill.

2. In respect of the question raised in paragraph 2 of Lord Cross' despatch, your Lordship will learn from the accompanying papers the steps that have been taken to ascertain the general feeling of the Hindu community on the subject of the proposed measure. The Bill was published in the Gazette in all the vernacular languages of the Presidency so long ago as 1891; and ~~a large number~~ of the leading members of the Hindu community have been individually consulted. On a careful consideration of the views thus elicited, we have arrived at the conclusion that we should allow the Bill to take its course in the Legislative Council without opposition on the part of Government.

3. In regard to the observation made in paragraph 3 of the same despatch, we are of opinion that the Bill cannot properly be held to affect the Hindu religion or the religious rites and usages of the Hindus within the intention of section 43 of 24 and 25 Victoria, Cap. 67, and that therefore the previous sanction of His Excellency the Governor-General under that section is not necessary; but we have referred the question to the Government of India, and the mover of the Bill has been requested to defer its further progress until the views of His Excellency the Governor-General in Council on the point have been ascertained.

We have the honour to be,
My Lord,
Your Lordship's most obedient, humble servants,

Fort St. George,
February 1897.

Endorsement—No. , dated February 1897.

Copy to the Government of India, Legislative Department, with reference to Home Department letter, No. 1130, dated 7th July 1875.

Secretary to Government.

Exd. C. M. Thumbusawmy.

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3. In regard to the observation made in paragraph 3 of the same despatch we are of opinion that the Bill cannot properly be held to affect ~~the be held to affect~~ the Hindu religion or the religious rites and usages of the Hindus within the intention of section 43 of XXIV & XXV Victoria, Cap. 67, and that therefore the previous sanction of His Excellency the Governor General under that section is not necessary; but we have referred the question to the Government of India, and the mover of the Bill has been requested to defer its further progress until the views of His Excellency the Governor-General in Council on the point have been ascertained.

We have the honour to be &c..

&c, &c.,

5d G.S.F. 31.1.97

Endorsement.

Copy to the Government of India, Legislative Department with reference to Home Department letter No. 1130, dated 7th July 1875.

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Legislative Department.

Despd 4/3/97

LETTER-to the Right Honourable the
Secretary of State for India.

My Lord,

With reference to Lord Cross' despatch No. 2, Legislative dated 25th June 1891 and in continuation of our despatch No.3. Legislative dated 10th April 1891, we have the honour to forward for your Lordship's information a copy of the proceedings of this Government No. dated together with a copy of the letter addressed to the Government of India on the subject of the Hindu Gains of learning Bill.

2. In respect of the question raised in paragraph 2 of Lord Cross' despatch your Lordship will learn from the accompanying papers the steps that have been taken to ascertain the general feeling of the Hindu Community on the subject of the proposed measure. The Bill was published in the Gazette in all the vernacular languages of the Presidency so long ago as 1891; and a large number of the leading Members of the Hindu Community have been individually consulted On a careful consideration of the views thus elicited we have arrived at the conclusion that we should allow the Bill to take its course in the Legislative Council without opposition on the part of Govern-

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is disposed to take the other view, I am to request that H.E. the Governor-General may be moved to accord the sanction required by ~~section 45 of~~ the Statute ~~XXIV & XXV Victoria cap. 67~~ for the introduction of the measure into the Madras Legislative Council.

8. A copy of this letter together with its enclosures will be forwarded for the information of Her Majesty's Secretary of State for India.

5d G.S.F. 31.1.7

Endorsement No. 16 Legislative 16-Feby-1897

Copy to the Government of India Home Department, with enclosures.

by means of learning imparted at the family expense constitute the separate property of the acquirer if the learning is of an ordinary description but form part of the family property if the learning is special or extraordinary. This state of the law as this Government is advised, differs from that prevailing in Bengal and other provinces; and H.E. in Council is therefore of opinion that the present Bill may appropriately be dealt with by the local legislature.

8. The second point is whether the sanction of H.E. the Governor-General is necessary for proceeding with the Bill under section 45(5) of the Indian Councils Act 1861 ~~XXIV & XXV Vict. 67~~. On this it is argued by some that although strictly speaking the measure affects the Hindu law and not the Hindu religion, the Hindu law itself is mainly founded upon religious principles, its propounders being influenced more by spiritual than secular considerations, and that therefore any enactment which modifies the traditional law is at variance with the religious principles on which it is based. On the other hand it is contended that this line of argument is far fetched and that the measure cannot properly be held to affect the Hindu religion within the intentions of the statute. H.E. in Council concurs in the latter view, ~~and is unable to see anything in the Bill which affects the Hindu religion or the religious rites and usages of the Hindus~~. If however, the Govt. of India

is

its natural course [redacted] without opposition on the part of this Government.

7. Two points remain for consideration. The first is whether the Bill should be proceeded with in the local or in the supreme Legislative Council. The Secretary of State speaks of the measure in para-graph 2 of his despatch quoted above, as "relating to a question of great importance and interest to all Hindus not only in the Madras Presi-dency but throughout India". It is therefore a question whether the Bill does not, equally applicable to Hindus living in other parts of British India and should not there-fore be taken into consideration by the Supreme Legislative Council. The Hon'ble V.Bhashyam Aiyangar in his note of 2nd May 1892 already referred to, while he has no objec-tion to the introduction of the measure into the Council of the Governor-General, if the Government of India should consider such a course necessary, points out that the Bombay Hindu Heirs' Relief Act VII of 1866 is an instance of legislation on a general point of Hindu law by a local legislature. Moreover the current of legal decisions as set out in the statement of objects and reasons attached to the Bill so far as this Presidency is concerned, is to the effect that acquisitions

consistently with retaining its cardinal principles, can best be made to conform to the advancing needs of the Hindu community; and that the efforts of enlightened members of that community in this direction are therefore entitled to the friendly encouragement or assistance of the Government.

6. So far as the present Bill is concerned, H.E.in Council after having carefully considered the arguments adduced for and against it considers that the balance of argument inclines to the side of those who are in favour of it. The Bill, H.E.in Council observes, is supported by a large body of learning and intelligence and is calculated to abate practical abuses and inconveniences that ought to be remedied in order to open the way for wholesome social progress, and though there are doubtless objections to the measure, they do not appear to be in-superable. Even those who regard the measure adversely do not seem to oppose it very strongly, while they do not allege that it will do any positive harm to the Hindu religion. The fact that no petitions deprecating the measure, were received when the bill was published in the several vernaculars in 1891 may also be accepted as some evidence that orthodox Hindus are generally indifferent to the legislation contemplated and are not likely to raise any clamour against it. We have accord-ingly come to the conclusion that the measure should be allowed to take

without of course doing violence to any of its fundamental or leading doctrines; he calls attention to the mass of litigation which arises out of Hindu family law, owing to the obscurity of that law or to changes in Hindu society and the growth of new ideas and rights; and he believes that legislation will take a very beneficial course if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of grave and practical importance. He adds that at the commencement and for a considerable time, legislation in matters of Hindu law can only be fragmentary, but that this has its advantages, and that such process of legislation may eventually form a sound basis for the codification of the Hindu law. These views, I am to observe, have generally much impress-
-ed this Government. Without committ-
-ing itself to the particular view that the codification of the Hindu law is an end necessarily to be kept in sight, this Govt. believes that it is by means of partial legislation, of which the present Bill may serve as an example, that the Hindu law, so far as it can be so adapted consist-
-ently

the views of those most interested in the changes contemplated by the bill; and

(2) whether the sanction of His Excellency the Governor-General under section 43 of statute 24 & 25 Victoria cap 67 was not necessary since the proposed measure involved the altera-
-tion of a law which the persons affected by it may regard as part of their religious code.

4. The steps that have been taken to elicit the views of the Hindu community regarding the principles of this important measure are set out in the Proceedings of this Government No. , a copy of which accompanies this letter. The Proceedings also embody the opinions recorded by those consulted and others .

These opinions and the whole question have now been carefully considered by H.E. the Governor in Council.

5. In the note attached to his letter of the 2nd May 1892 the Hon'ble V. Bhashyam Aiyangar makes certain general observations as to the direction which legislation may profit-
-ably take in the matter of Hindu law. These observations appear to H.E. the Governor in Council, to throw out a new line of thought deserving of careful reflection. The Hon'ble Bhashyam Aiyangar considers that it is the duty of the Legislature to advance the Hindu Law and adapt it to the conditions and sentiments of modern Hindu Society,

× printed as fo. No. 13 Legn. dy 22.2.93.

× Please see note on front page of these drafts HV.

I would make this stronger by inserting after 'right' the words: "indeed while admitting a possible occasion for premature or hasty codification"

* Letter from the Govt.of India No.1456 Legislative,d/24-8-91.

Letter from the Govt.of India,No 519 Legislative d/8-3-93.

Letter to the Govt.of India No.22 Legislative d/17-3-93.

11/2/97

JS

26/2/97

LETTER No. 15 Legve dt 26-2-97

To

The Secretary to the Govt.of India

Legislative Department.

Sir,

In continuation of the correspond-
-ence noted on the margin, I am directed to address you on the subject of the Hindu gains of Learning Bill.

2. The Hon'ble V.Bhashayam Aiyangar an un-official additional member of the Madras Legislative Council, obtained leave to introduce the Bill at the meeting of the Council held on the 24th February 1891, and the Bill was published in English in the Fort St.George Gaz-
-ette of the 10th March 1891 and in the Tamil, Telugu, Malayalam and Canarese vernaculars in the Fort St George Gazette of the 26th and 19th May 16th June and 21st April respectively of the same year.

3. A copy of the bill was in due course transmitted to Her Majesty's Secretary of State for India. Lord Cross' * despatch in reply indicated two points on which it was desirable to have an assur-
-ance before the Bill was further proceeded with in the Madras Legis-
-lature/

(1) whether the opinion of the Hindu community at large on the measure had been ascertained especially in

* Despatch No.2 Legislative d/25/6/91 to the Govt.of Madras.

subject matter of the Bill generally and until the views of the Governor General in Council are ascertained the author of the Bill be will be requested to defer its further progress.

(fr O) (sd) G.S.F
31.1.97

To
The Hon. V. Bhashyam Aiyangar, C.I.E.,
Diwan Bahadur.

26/2/97

LETTER:-

10.2.97

wholesome social progress.

4. Two questions have been raised with reference to the Bill (1) whether the Bill should be introduced into and proceeded with in the local legislative Council or is a measure which may more appropriately be dealt with in the supreme Legislative Council; and (2) whether the provisions of the Bill affect the Hindu religion, or the religious rites and usages of the Hindus and as such require the sanction of the Governor-General under section 43 (5) of the Indian Councils Act 1861.

5. As regards the first question His Excellency the Governor in Council is advised that the Hindu Law as to gains of Learning differs in Madras in ~~search~~ several material respects ~~differs~~ from the law in Bengal and other provinces, and accordingly sees no objection to the progress of the Bill ~~being proceeded with~~ in the local legislative council.

As regards the second question, the bill, so far as His Excellency the Governor in Council is in a position to judge, cannot properly be held to contain anything which affects the Hindu religion, or the religious rites and usages of the Hindus within the intention of the statute, and His Excellency the Governor in Council therefore considers that there is no obligation to obtain the previous sanction of the Governor General. The Govt. of India will however be addressed ~~pressed~~ on this point and on the sub-

(7) That the rule that the savings of a learned member of a family are liable to partititon tends to make him extragavant or to promote resort to fraudulent concealment of his earnings.

(8) That the provisions of the Bill coincide with the law as laid down in the Smritis.

(9) That the provisions of the Bill coincide with what is already accepted as the customary law among Marumakkatayam and Aliyasantana people in the Districts of Malabar and South Canara.

(10) That the Bill will pave the way for the codification of Hindu law and remove the idea that such law is not subject to legislative control.

(11) That the Bill is desirable as it places the gains of learning only on the same footing with other self acquired property.

3. Without entering here into a detailed criticism of these arguments the Govt. will merely state that the conclusion at which it has arrived is that that the balance of argument inclines to the side of the large body of learning and intelligence which favours the Bill. Those who take an adverse view do not, it appears to the Govt., press their opinions strongly and they do not allege that the bill will do any positive harm to the Hindu religion. His Excellency in Council believes that the measure if passed into law will on the whole tend to abate practical abuses and inconveniences which ought to be remedied in order to open the way for

incr[illegible]pend with the Hindu [illegible]

On the other hand in favour of the bill it is urged

(1) That the Bill will remove the existing uncertainty of the law which promotes litigation and disturbs the harmony of joint families and has a tendency to force a learned member to become divided or to conceal acquisitions made by him or to invest them benami when otherwise he might be willing to leave the ancestral property intact for the common benefit of the family.

(2) That it will tend to foster a spirit of individual enterprise and self-reliance securing the fruits of his individuals efforts to the acquirer and ~~would thus~~ stimulating other members of the family to support themselves.

(3) That it will tend to raise the credit and status of the educated members of the community.

(4) That the gains of special learning have become trifling now that education is widespread and are the result rather of natural ability and industry than of actual education.

(5) That it is impracticable to lay down distinctions between ordinary and extraordinary learning as contemplated in the rulings of the courts.

(6) That the existing rule places a premium upon idleness during the time of education.

observations thereon of the Hon. Bhashyam Aiyangar who was given an opportunity of perusing them as well as some other opinions independently submitted including a memorial purporting to be from "the citizens of Madras" on the subject of the Bill.

2. Weighty opinions have been expressed both in favour of and against the measure. The main arguments on either side may be briefly summarized

Against the Bill it is urged:

(1) That it is anomalous to treat the gains of learning in a different manner from the gains of trade:

(2) That the Bill is likely to prejudice the education of the younger members of joint families inasmuch as the manager being debarred from a share in the gains of their learning will have no inducement to give them a liberal education:

(3). That the measure is unpopular with Hindus in general:

(4). That the Bill is unnecessary because the educated members of a family can always secure partition if they wish to enjoy their earnings separately.

(5.) That the Bill strikes a blow at the joint family system.

(6). That the Bill is one which is equally applicable to Hindus living in other provinces and should therefore be taken into consideration by the Supreme Legislative Council.

(7). That the provisions of the Bill are inconsistent with the Hindu religion.

Indeed the very arguments in favour of partial legislation from time to time to suit the advancing needs of the community is ~~rather~~ in a sense antagonistic to the proposal for codification. Hindu society is for the present & will for many years be in a state of ~~flux~~ rapid flux: & there is no particular object in the legislation either as an end in itself or even to be looked for.

At any rate it seems the safer course ~~not for~~ for Govt not to commit itself to codification. I have drafted in that view accordingly for approval.

S.R.

p.2.97

[G. 24.]
590—28-10-96.

Legislative DEPARTMENT.

Papers to be read in proceedings :—

Again ~~G.O., dated~~ despatch from the Secy of State for India, dt 25-6-1891, No. 2 Legislative ——— P

Again G.O., dated 31st August 1892, No. 47 —do— ——— P

" " 22? February 1893, " 13 —do— ——— A

Current No. 5 of 1896, dated 6/1, from the Hon: V. Bhashyam Aiyangar A

" " " 189 , " , "

" " " 189 , " , "

No 14 Legre dt 16 Feby 1897

ORDER.

The foregoing papers relate to the Hindu Gains of Learning Bill, a Bill to declare the gains of learning by a Hindu to be his separate property, which the Hon. V. Bhashyam Aiyangar, an unofficial additional member of the Madras Legislative Council obtained leave to introduce at the meeting of the Council held on the 24th February 1891. The Bill was published in the Gazette so long ago as 1891 in the vernaculars of the Presidency without however eliciting from those affected by the measure any remarks which would enable the Govt. to learn the feelings entertained by the Hindu community regarding the principles of the bill. To attain this end the Govt. accordingly adopted the only course that appeared to be practicable, of consulting individually those known to be among the leading members of that community. The papers read above embody the opinions thus procured together with the further

HE the Governor (for)
Hon'ble Bliss
Hon'ble Rose
HE

There are three draft
(1) a draft GO
(2) -- letter to the Govt of India, &
(3) -- despatch to the Sec of State

There is one point in the draft enclosed which it is necessary to call attention. In the letter to the Govt of India I have drafted so as not to commit the Govt to any views on the codification of the Hindu laws. This is a very thorny subject. There is an influential body of opinion in favour of the view that such codification is to be entirely deprecated. To codify that law would go far to stereotype it, which would be a misfortune. The loss of legislative or legal sanction would be more likely to give way to the pressure of the ideas of a civilisation which are sooner or later must encompass the Hindus which are under the control.

3. With reference to the observation made in para 3 of the same despatch from the Govt of India in that despatch under reference, we are of opinion that we cannot properly be held to see anything in the Bill affecting the Hindu religion or the religious rites and usages of the Hindus, and we are therefore of opinion that the previous sanction of H.E. the Governor General under Section 43 of 24 & 25 Victoria, Cap. 67 is not necessary; but lest any doubt on the point should exist, we have referred the question to the Government of India, and the further progress of the Bill will be suspended until the receipt of a reply from that Government to the reference now made.

We have the honour to be
Sir
Your most obedient humble servants

Endorsement.

Copy to the Government of India, Legislative Dept with reference to Home Dept letter No. 1130 dt 7 July 1875.

CRV
25/1/97

Copy of para 3 of the despatch (Secy of State's despatch) as the Bill has been referred to Select Committee

Leg Dept

Letter to the Right Honble the Secretary of State for India

My Lord

With reference to Your Lordship's despatch No. 2. Legislative dated 25th June 1891 and in continuation of our despatch No. 3 Legislative dated 10 April 1891, we have the honour to forward for your Lordship's information a copy of the proceedings of this Government No. dated , on the Subject of the Hindu Gains of Learning Bill, together with a copy of the letter addressed to the Government of India.

2. Your Lordship will learn from the papers that have been laid before you that the general feeling of the Hindu Community at large on the subject of the proposed measure, as has been ascertained as stated in paragraph 2 of our despatch by referring the Bill to several leading The Bill was published in the gazette in all native gentlemen of that community, the vernacular language of the So long as and after having carefully gone through on a careful consideration of the views of the various opinions received we thus solicited are have arrived at the conclusion that we should allow the Hindus are in favour of the measure to take its course in the Legislative Council without and that the other Hindus are not likely to raise any opposition to it.

In respect of the question raised in reference to para 2 of Govt despatch

the accompanying papers

1891, and a large number of the leading members of the Hindu community have been individually consulted of them who have intimated their opinions

On the other hand it is contended that this line of argument is far fetched and that the proposed measure does not affect the Hindu religion in the slightest degree; and I am to say that His Excellency in Council concurs in the latter view, and is unable to see anything in the Bill which affects the Hindu religion or the religious rites and usages of the Hindus. His Lordship the Secretary of State however seems to have his own doubts on the point, as will be seen from the concluding paragraph of his despatch of June 1891 but if the Government of India however is disposed to take the other view Hereon, I am to request that H.E. the Governor General may be moved to accord the sanction required by Section 43 of the Statute XXIV & XXV Victoria Cap. 67 for the introduction of the measure into the Madras Legislative Council.

within the intentions of the statute

78 A Copy of this letter together with the Enclosures will be forwarded for the information of Her Majesty's Secretary of State for India.

CRV 20/1897

Endorsement

Copy to the Government of India, Home Department, with Enclosures.

family expense ~~by~~ constitute the separate property of the acquirer if the learning ~~imparted~~ is of an ordinary description but form part of the family property if the learning ~~is imparted~~ is special or extraordinary.

This state of the law, as ~~this~~ Govt is advised, differs from ~~that~~ prevailing in Bengal and other provinces, and His Excellency in Council is therefore of opinion that the present Bill ~~should be followed~~ may be dealt with by the appropriately ~~within the sphere of~~ local legislature, ~~& should be proceeded with in the local legislative Committee~~

5. The second point is, Secondly,

whether the sanction of His Excellency the Governor General is necessary for proceeding with the Bill, under Section 43(5) of the Indian Councils act 1861.

On this ~~point~~ it is argued by some that although strictly speaking the measure affects the Hindu law and not the Hindu religion, the Hindu law itself is mainly founded upon religious principles, its propounders being largely influenced by spiritual, rather than secular considerations, & that therefore any Enactment which modifies the traditional law is at variance with the religious principles on which it is based.

because accordingly come to the conclusion that the measure should not be allowed to take ~~the~~ ~~of~~ the ~~point~~ natural course in the Leg. Council without ~~any~~ objection on the part of the Govt.

6. ~~Another~~ Two points remain ~~to be considered~~ with reference to the Bill. ~~viz~~. The first is, ~~Secondly~~ whether the Bill should be proceeded with in the local or the Supreme Legislative Council. The Secretary of State speaks of the measure in paragraph 2 of his despatch ~~referred~~ recited to above, ~~that~~ as "relating to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India," and it is therefore a question which ~~also suggested that~~ the Bill is not Equally applicable to Hindus living in other parts of British India & ~~should~~ not therefore be ~~proceeded with~~, it should be taken into consideration by the Supreme Legislative council.

The Hon'ble V Bhashyam Aiyangar ~~upon this point~~ in his note of 2nd May 1892 ~~referred~~ already referred to ~~above~~ and ~~pointed~~ out that the Bombay Hindu Heirs' Relief Act VII of 1866 is an instance of legislation on a ~~general~~ point of Hindu law by a local legislature, ~~but~~ while he has no objection to the introduction of the measure into the Council of the Governor-General if the Government of India should consider such a course necessary.

~~I am directed to observe that~~ However, Moreover, the current of legal decisions as set out in the Statement of Objects & reasons attached to the Bill ~~on the subject of the Hindu law of learning by a Hindu~~, So far as this Presidency is concerned, is to ~~this~~ effect ~~that~~ that acquisitions by means of learning imparted at the family

~~gentlemen on the Hustings~~ ~~Whether you dissapprove~~
~~of the Measure~~ ~~their community~~ ~~forward out of the~~
~~groove in which it has long run~~ ~~deserve~~
~~and therefore are~~ entitled to the friendly encouragement or
assistance ~~of the support~~ of the Government.
~~Legal~~

~~I must~~ ~~Then~~ ~~directed~~ to say that
So far as the present Bill is concerned
His Excellency in Council after having
carefully considered the arguments
adduced for & against the ~~measure~~ present bill,
considers that the balance of argument
~~is~~ incline
~~if~~ on the side of those who ~~give in~~
favour ~~support the Bill~~ it. The Bill,
~~is in~~ His Excellency in Council observes, is supported
by a large body of learning and intelligence,
& is calculated to abate abuses and
that ought ~~the remedied~~ ~~order~~ Practical
inconveniences, & to open the way for wholesome
social progress, & though there are
doubtless objections to the measure, they
are not important. ~~It is also~~ noticeable
regard ~~hold~~ ~~take~~ the measure ~~are~~ adverse
that even those who put forward arguments
against the Bill do not seem to appear
~~Very~~ strong opposition, while ~~the~~ ~~Council~~
~~in~~ ~~some~~ ~~that~~ fair weight may
allege that ~~some~~ do deny positive hardship
The fact that no petitions ~~on the Bill~~
~~have been~~ received, deprecating the
measure, ~~from any~~ orthodox Hindus, ~~and~~ when the
bill was published in the Gazette & Local
Newspapers as long ago as 1891 is also
evidence of the indifference with which
~~a~~ section of the Hindu community ~~say~~ ~~that~~ ~~that~~
that orthodox Hindus are likely to receive
portion of the Hindu community are not
generally indifferent to the legislation
~~likely~~ to raise much clamour in
~~the matter~~ contemplated & are not
likely to raise any clamour against

do not appear to be ~~further~~ unspeakable, ~~that~~
of material moments.

of the Hindu religion

Hindu law to modern requirements and to
remove uncertainties in the administration
of that law on points of grave and practical
importance. He ~~further~~ adds that at the
commencement and for a considerable
time, legislation in matters of Hindu law
can only be supplementary but that
~~has~~ its advantages & that ~~this~~ such
this process of legislation will eventually
~~lead~~ may form a sound basis for the codification
of the Hindu law. These views
~~The Scheme of codification~~
~~and the instrument by which it is proposed~~
~~to use in carrying it out~~, Dare to observe,
have generally much impressed ~~this~~ Your Excellency
~~in Council~~, ~~in whose opinion though~~
~~the importance of the proposed programme~~
~~of legislation cannot be too highly rated,~~
~~the advantage of securing, for carrying it~~
~~out, the practicability & special knowledge~~
~~possessed by such men as the Honble~~
~~V. Bhashyam Aiyangar appear to be~~
~~beyond question.~~

~~The Hindu Law Committee Bill~~
~~is part of the legislative scheme~~
~~sketched out in the above paragraph~~
~~and is the opinion of His Excellency in~~
~~Council~~ ~~It is~~ by means of
~~such~~ partial legislation that the
Hindu law can be made to conform
to the advancing needs of the Hindu
Community; & the efforts of such enlightened

without committing itself to the particular
codification of the Hindu law which may
necessarily be kept in view as an end
~~to be attained~~ to be aimed at, ~~that~~ it
~~believes~~ believes that it

~~The~~ ~~draft~~ ~~which~~ the present Bill may be taken as an example,

so far as it can be so adapted consistently
with retaining its ~~essential character~~
ordinal principles

members of that
Hindu community in their direction

opinions thus elicited

The observations of the Hon'ble V. Bhashyam Aiyangar, the opinions they refer to, together with the orders passed upon them all will be found, in extenso, embodied in Copy of the proceedings of this Government No. , dated , a copy of which accompanies this letter, and have now been carefully considered by [illegible]

5. The observations made by the Hon'ble V. Bhashyam Aiyangar in the note attached to his letter of the 2nd May 1892 [illegible] makes certain general observations as to the direction which legislation should take in the matter of Hindu Law, to support these observations appear to His Excellency the Governor in Council, to throw out a new line of thought which deserves careful reflection. In that note the Hon'ble Mr. Bhashyam considers that it is the duty of the legislature to advance the Hindu Law and adapt it to the conditions and sentiments of modern Hindu Society, without of course doing any violence to any of its fundamental or leading principles; the note calls attention to the mass of litigation which arises out of Hindu family law, owing to the obscurity of that law or to changes in Hindu Society and the growth of new ideas and rights, and he believes that legislation in this direction will take a very beneficial course if it enacts from time to time such changes as may be necessary to adapt the

These opinions & the whole question may profitably

The Hon. Mr. Bhashyam considers

× Printed in G.O No 13 Legislative Dy 22. February 1893 p. 5

of 26th and 19th May, 16th June & 21st April respectively of the same year.

3. A copy of the bill as was then in due course transmitted to Her Majesty's Secretary of State for India. Lord Cross in acknowledging the receipt of the bill despatch in reply recorded two points on which it was desirable to have an assurance before the bill was further proceeded with in the Madras Legislature

× Despatch No 2 Legislative Dy 25 June 1891 to the Government of Madras.

(1) whether it would be desirable to ascertain the opinion of the Hindu community at large on the measure, and especially the views of those most interested in the alterations changes contemplated by the bill

(2) whether the Madras Government should satisfy itself as to the necessity or otherwise for the sanction of His Excellency the Governor-General under Section 43 of Statute 24+25 Victoria cap 67 was necessary, since the proposed measure involved the alteration of a law which the persons affected by it might regard as part of their religious code.

4. In conformity with His Lordship's first Suggestion the bill was referred to a number of leading members of the Hindu community for remarks and their opinions received an expression of their views on it from them, together with those of one or two Literary Associations and a Memorial from the citizens of Madras on the matter of the Bill, were forwarded by the Hon'ble V. Bhashyam Aiyangar the author of the bill for his remarks.

Thirty

4 The steps that have been taken to elicit the views of the Hindu community regarding the principles of this important measure are set out in the Proc^s of this Govt. No , a copy of which accompanies this letter. The Proc^s also embody the opinions recorded by those consulted & others

views of the G.G. in C. are ascertained

the Governor in Council therefore considers that there is no obligation to obtain the previous Sanction of the Governor General ~~to proceed to action~~. The Govt of India will however be addressed on this point, and on the subject matter of the Bill generally, and ~~in~~ till the receipt of the Govt's thanks for the Bill & of that reply, the further progress of the Bill will be deferred requested to defer its further progress.

8/3/1893

To The Hon'ble V. Bhashyam Aiyangar, C.I.E. Diwan Bahadur

Secretary to the
Letter to the Govt of India,
Legislative Department.

Sir

In continuation of ~~with reference to~~ the correspondence noted on the margin, I am directed to address you on the subject of the Hindu gains of learning Bill.

2. The Hon'ble V. Bhashyam Aiyangar an un-official additional member of the Madras Legislative Council, obtained leave to introduce the Bill at the meeting of the Council held on the 24th February 1891, and the Bill was published in English in the Fort St George gazette of the 10th March 1891 and in the vernaculars Tamil, Telugu, Malayalam & Canarese vernaculars in the Fort St George gazette

X.
Letter from the Government of India No 1156 Legislative dated 24 August 1891
Letter from the Government of India No 519 Legislative dt 8 March 1893.
Letter to the Government of India No 22 Legislative dt 17 March 1893.

the Bill thinks that the balance of argument ~~appears to be inclined~~ is on the side of those who favour the Bill. The Bill, in the opinion of His Excellency in Council, supported by the large body of [illegible] which has declared in favour of the Bill, tends to remove abuses and inconveniences which ought to be remedied, and will open the way for wholesome Social progress.

4 Two questions have been raised with reference to the Bill:-

(1) whether the Bill should be introduced into and proceeded with in the local legislative council, or the Supreme Legislative council; and

(2) whether the provisions of the Bill affect the Hindu religion, or the religious rites and usages of the Hindus, and as such required the Sanction of the Governor General under Section 43 (5) of the Indian Councils Act 1861.

5 As regard the first question, His Excellency the Governor in Council is advised that the Hindu Law as to gains of learning differs in Madras in several material respects from the law in Bengal and other Provinces, and accordingly does not appear to be open to question that the Bill should be proceeded with in the local legislative council

6 As regard the second question, the Bill so far as it contains anything which affects the Hindu religion, or the religious rites and usages of the Hindus, and His Excellency

Against the Bill it is urged
(1)
(2)
(3)
(4)
(5)
(6)
(7)

Detail the objections as stated in the Dewan's note, pointing out the fundamental fallacies

On the other hand in favour of the Bill it is argued
(1)
(2)
(3)
(4)
(5)
(6)
(7)
(8)
(9)
(10)
(11)

There who take an adverse view do not appear to the Govt, press their opinions strongly as they do not allege that the Bill will do any positive harm to the Hindu religion

3 Without entering here into a detailed criticism of these arguments the Govt will merely state that it has arrived at the conclusion at which it has arrived is a question which may more appropriately be dealt with on

a question of fact, & Govt is prepared to hold that

within the intention of the Statute

[G. / 24.]
500—28-10-96.

Legn DEPARTMENT.

Papers to be read in proceedings:—

Despatch from the Secy of State for India dy 25.6 1891, No. 2 Legislative — P
Again ~~G.O., dated~~ 31st August 1892, No. 47 Legislative — P
Again G.O., dated 22 February 1893 " 13 Legislative — A
Current No. 5 of 1896, dated 6 Jany, from the Hon'ble Bhashyam Aiyangar
" " " 189 , " , "
" " " 189 , " , "

ORDER.

P S.

The foregoing papers relate to the Hindu Gains of learning Bill, a Bill to declare the gains of learning by a Hindu to be his separate property, which the Hon'ble V. Bhashyam Aiyangar, an un-official additional member of the Madras Legislative Council obtained leave to introduce at the meeting of the Council held on the 24 February 1891, at the same time publishing the Bill in the Fort St George Gazette.

The Bill was published so long ago as 1891 in the vernaculars of the Presidency without having elicited from those affected by the measure any remarks which would enable the Govt to learn the feelings entertained by the Hindu Community regarding the principles of the bill. To attain this end the Govt accordingly adopted the only course that appeared practicable of consulting individually those known or among the leading members of that community. The pp. read above embody the opinions thus procured together with the further observations thereon of the Hon. Mr Ry who was given an opportunity of perusing them

2. His Excellency the Governor in Council after a careful consideration of the arguments put forward for and against

2. Weighty opinions have been expressed both in favor of & against the measure. The main arguments on either side may be briefly

as well as some other opinions independently submitted, including a memorial purporting to be from "the citizens of Madras" on the subject of the Bill

HINDU GAINS of LEARNING BILL.

(FOR ORDERS)

H. E. The GOVERNOR & Circ.

Office note

Complete the file by adding a copy of the Bill & Statement of Objects & Reasons before sending

T C S. 27.1.96

the current now under consideration but there is no need specifically to discuss them as their subject matter has already been dealt with in the summary of the arguments for and against the Bill. When the attitude of Govt. on the matter is settled, it will presumably be necessary to inform the Govt. of India of the action which has been or is about to be taken as requested in the letter which will be found in G.O. No. 21, d/ 17-3-93 which appears to require a furher ~~intimation~~ information, on the subject than which has already been given.

If, however, it is decided that Govt. shall accord its support to the progress of the Bill, it will be necessary to decide whether the sanction of the Govt. of India should be solicited under sec: 43 of the Indian Councils Act of 1861 on the ground that it affects the religion of the Hindus.

Dr
27.3.96

LR
36/3/96

only the skill or knowledge of the acquirer but also the use to however small an extent of joint family funds.

11. The provisions of the Bill are unjust as they ~~have been of~~ benefit a minority at the expense of the majority.

This of course is the point of view of the individuals who have not received special education or who having received special education will be debarred from the exclusive enjoyment of the gains of their learning because their professions ~~is~~ are exercised with the aid of capital contributed from the joint funds Such individuals no doubt form the vast majority.

The balance of the arguments for and against the Bill as summarized above appears to be distinctly against legislation on the lines proposed by the Hon: Bhashyam Aiyangar. If this view is accepted, orders are solicited as to the nature of the intimation to be conveyed to the Hon'ble Member. The Bill was introduced on the 24th of February 1891 and was liable to be removed from the list of business under Council Rule No. 71, but it was decided, vide G.O. No. 81, d/ 30th October 1891, that it should not be removed for the time being and the Hon:Bhashyam Aiyangar has since then no doubt refrained from making any motion with regard to the Bill in the idea that Govt. first desired to be in possession of his remarks upon the replies received from the various gentlemen consulted. His remarks are contained in

leave to introduce only was granted

?

in enabling the professional man to earn the property. He contends that the legislature should consider it unnecessary to interfere in order to lay down hard and fast rules in respect of a doctrine, the practical application of which is variable according to the peculiar facts of each case. Another gentleman M.R.Ry. Ramakrishna Aiyar points out that in other branches of Hindu Law where uncertainty exists, it is to the decisions of the High Court and ~~to~~ the Privy Council that the public has looked for the removal of the uncertainty and not to ~~legislature~~. The same gentleman, in agreement with others, considers that it is undesirable that the legislature should interfere at all with the Hindu Law unless interference is rendered absolutely necessary by exceptional circumstances.

10. The Bill unduly favours those branches of special education which can be put to practical use without the aid of capital, such as the education for the Bar, Medicine, the Civil Service and places at a disadvantage special training in subjects like Commerce, Agriculture and many industries which are essential for the development of the country, because such special training as a rule requires to be supplemented by land or capital contributed from the joint family property.

The Bill, it will be noticed does not apply to cases in which the approximate ~~cost~~ cause of education is not

doubts as to whether the proposed measure involved the alteration of a law which the persons governed by it might regard as a part of ~~their~~ their religious Code. The Govt. of India itself has hitherto made no comment on the matter, but as there seems to be some little difference of opinion on the subject, it would probably be politic to obtain the previous sanction of the Govt. of India. ~~If~~ if it is decided that Govt. should take steps to forward the Hon: Bhashyam Aiyangar's ~~speech~~ measure.

8. It is inadvisable to proceed with such a Bill without first appointing a commission to ascertain public opinion on the matter. This view is expressed by the Hon. P. Chentsal Rao, vide page 25 of the G.O. No.13, d/ 22-2-93, who apparently considers that the steps which the Govt. has taken to ascertain public opinion are inadequate.

9. The gains of learning is by no means the only topic the law regarding which is uncertain and the uncertainty is not so great as to call for interference.

This argument is taken a step farther by Diwan Bahadur P. Srinivasa Rao, vide page 44 of G.O. No.13, d/ 22-2-93, who argues that in this Presy: there is no actual present uncertainty as to the state of the law, the guiding principle being that the question must be upon the facts of each case how far the common family means were instrumental

I think we need not anticipate any objection on this score
JG

The best way is to publish the Bill, & that will be sufficient
JG

Under clause (5) of section 43 of the Indian Councils Act of 1861, the Governor in Council cannot except with the previous sanction of the Governor General take into consideration any law affecting the religion or religious rights and usages of any class of Her Majesty's subjects in British India. If therefore the Bill does really affect the Hindu religion, the sanction of the Govt. of India should be obtained before proceeding with the Bill. Strictly speaking the Bill affects the law ~~rather than the religion~~ and not the religion of the Hindus, but it is argued that the law is mainly founded upon religious principles, its propounders being more influenced by spiritual considerations than secular ones and that for this reason any enactment which modifies the traditional law is at variance with the religious principles on which it is based. On the other hand it is contended and apparently with reason that this line of argument is far fetched and that the proposed measure does not really affect the Hindu religion in the slightest degree. This view is taken by the Hon: Bhashyam Aiyangar himself whose opinion on such a point is of great value though its value may be detracted from by the fact that as mover of the Bill he may be disposed to minimize the objections taken to it. In the Secy: of State's despatch No.20/ 25-6-91, to be found in G.O. No.47, d/ 31-8-92, it would appear that His Lordship had

Srinivasa Raghava Ayyangar is also positive on this point. He says "No religious question whatever is involved in the proposed legislation & have read her no misgivings on that score."

F. The Bill strikes a blow on the joint family system.

This objection hinges on the larger question whether the joint family system is beneficial or the reverse and it is argued on the other hand that the Bill tends to prolong the existence of the system in that it removes the reasons for the litigation and fraud said to be incidental upon ~~up~~ the uncertainty of the law in regard to the gains of learning. ~~On the other hand~~ But it may be argued that the harmony of the joint family is just as liable to be disturbed by the feeling that the learned member of the family is placed in an unduly favourable position by the provision of the Bill.

And the necessity two learned members is now under 7 dividing

6. The Bill is one which is equally applicable to Hindus living in other provinces and it should therefore be taken into consideration by the Supreme Legislative Council.

This point is touched on by the Hon: Bhashyam Aiyangar in his note at page 5 of G.O. No. 13, d/ 22-2-93. He has no objection to its introduction into the Council of the Governor General if the Govt. of India should desire such a course but points out that the "Bombay Hindu Heirs Relief Act" VII of 1866 is an instance of legislation on a general point of Hindu Law by a local legislature.

7. The provisions of the Bill are inconsistent with the Hindu religion

wish to enjoy their earnings separately.

This is the case except in Malabar and S.Canara, but it is argued on the other side that suits for partition form a most troublesome piece of litigation and that some easier method should be devised for securing to the acquirer his gains by learning . To this, again, the rejoinder of the old school Hindu is that if the acquirer is so selfish as to desire to claim the exclusive enjoyment of his earnings, that is no reason why the legislature should step in to save him the trouble of and odium which a premature suit for partition involves. The case is well put by M.R.R. Ramakrishna Aiyar, a High Court Vakil of Tinnevelly*, vide page 52, of G.O. 22-2-13 No 13 in these words. "Under the existing "law we can at least trust to the good "sense and feelings of delicacy and af- "fection of the earning member for giving "the family the benefit of the acquisi- "tions by postponing partition for a "time; whereas the Bill declares that "from the very commencement the acqui- "sitions are the exclusive property of "the earning member though remaining "undivided. No scope is given for the "operation of the feelings of delicacy "of moral duty or affection or the "like. Under such circumstances even "the sense of moral duty will become "blunted in this respect".

An important exception. S.S.H.

* (whose remarks & his whole question are particularly deserving of attention)

one of the junior members. It is moreover to be noted that considerations of paternal affection cannot be relied upon in cases where the managing member is a uncle or a still more remote relative, the junior members having been left orphans in infancy. With reference moreover to the statement that a Hindu father does not regard the education of his sons as an investment, it is to be remarked that more than one of the gentlemen who have given opinions on the matter speak of "many instances" in which poor fathers encumber their little property in order to educate their sons. The expensive special education, it is said, is frequently given to the eldest son with the double object of making him useful not only to himself but also to his younger brothers.

3. The measure is unpopular with Hindus in general.

This is a question of fact. So far as can be gleaned from the opinions now sent in, educated Hindus are for the most part in favour of it but this is no matter for surprise as it confers unmixed benefits upon the educated. It is extremely difficult to gauge the opinion of the old school Hindus, but perhaps from the papers before Govt. it would appear to be distinctly opposed to legislation on the lines of this Bill.

4. The Bill is unnecessary because the educated members of a family can always secure partition if they

I believe the statement of Sir T. Muttusami Ayer that the educated classes are also not a man in favour of the Bill, & that the other classes do not object to it much

argued that the member engaged in trade for the benefit of the family pledges the ~~whole credit~~ family credit and thereby renders his co-parceners liable for losses incidental to the business. If however a member so engaged in trade renders the family liable to pay a share of his loss, it is to be noted that in his case the original capital expended in setting him up in business may be recovered, whereas in the case of the educated member of the family, the capital outlay upon his education can never be recovered.

2. The Bill is likely to prejudice the education of the younger members of joint families inasmuch as the manager being debarred from a share in the gains of their learning will have no inducement to give them a liberal education

On the other hand it is argued that the Hindu father does not regard the education of his sons as an investment and that paternal affection and public opinion are the motives which actuate him in educating ~~him~~ them. This is no doubt true in the case of individuals of high moral feeling and substantial means, but where the moral sense is deficient it is improbable that any of the sons will receive an adequate education and where the family property is considerable, it is impossible for the Managing member to give a special education to more than

is equitable to describe, say, a course of training at the Law College as only indirectly instrumental in acquiring the Vakil's fees which the person so trained subsequently earns.

Against the Bill.

1. It is anomalous to treat the gains of learning in a different manner from the gains of trade.

This position is exemplified in the following hypothetical case. Take, as a type, a family consisting of a father, mother and 3 sons with landed or other property of the aggregate value of Rs. 5000. The father spends about Rs. 2,000 in giving one of the lads a University education , sets up the second in business giving him a capital of Rs. 1,000 and makes the 3rd lad to look after the lands left, worth about Rs.2,000. It is possible that each man may earn Rs.4,000 or Rs.5,000 in the course of ten years and that circumstances may render a partition desirable. If the division takes place under the existing law, the total earnings would be divided equally. The Bill would however give to the lad who has been educated at the University the whole of his own savings, 1/3 of the ~~remains of the~~ residue of the original family property and 1/3 of the savings of each of his two brothers. This division, as the gentleman who puts this hypothetical clause aptly remarks, would "commend itself to none but the educated Hindu." On the other side, it is however argued

In this case the education is directly instrumental, but in most cases it is not. The education of the Law College only empowers a vakil to exercise his natural abilities & industry in pleading JG

obtain it against the wishes of the rest of the family. In Malabar and S. Canara it is therefore only natural that the gains of learning should stand on a different footing.

10. The Bill will pave the way for the codification of Hindu law and remove the idea that such law is not subject to legislative control.

The same argument is used for the purpose of showing that the Bill is mischievous. This view will be found set out at length in the opinion of Diwan Bahadur P. Srinivasa Rao, Judge of the City Civil Court, page 43, G.O.No. 13, d/ 28-8-93. His contention, and it appears on the whole to be warranted, is that the legislature has placed itself under the obligation of preserving the benefit of the Hindu law to Hindus in all matters concerning religion, caste, marriage, succession and inheritance.

The Hindu Law, like the English Law, must be made to conform to Social advances JG

11. The Bill is desirable as it only places the gains of learning on the same footing with other self acquired property.

This argument is adduced by Sir T. Muttusami Aiyar, vide para 2 of his letter on page 55 of G.O. No. 13, d/ 28-8-93. It involves the assumption that the learning imparted to any individual is not directly instrumental in acquiring property which he gains with the aid of it and cannot be regarded as a joint cause of the acquisition. The strict letter of the law being disregarded, it is for consideration whether it the case of those individuals whose moral sense is deficient as judged by the standard of orthodox Hindu opinion and there is no reason why the law should intervene to facilitate these lapses from high moral standard.

8. The provisions of the Bill coincide with the law as laid down in the Smritis.

This argument is set out fully in the Hon'ble Bashyam Aiyangar's speech delivered when he moved for leave to introduce the Bill, but the rejoinder is that the Courts invariably follow the careful detailed exposition of the law to be found in the writings of the commentators on the Smritis. The fact that a particular view is in accordance with the Yajnavalkya Smriti would not in S. India justify the Courts in overruling a dictum contained in the Mitakshara purporting to explain the meaning of Yajnavalkya.

9. The provisions of the Bill coincide with what is already accepted as the customary law among Marumakkatayam and Aliyasantana people in the Districts of Malabar and S. Canara.

If this statement is correct - it is made by a Sub-Judge of many years' experience of those districts -- the Bill is unnecessary in the case of those classes of the community. It is to be noted that in Malabar and S. Canara partition can only take place with the consent of all the members of the family whereas in other parts of S. India any individual can sue for partition and

But, when the Bill is passed the customs may change JG

attributable to the education imparted

5. It is impracticable to lay down distinctions between ordinary and extraordinary learning as contemplated in the rulings of the Courts.

In many cases the decision is based on no certain grounds

The answer to this is that doubtful cases must necessarily be decided upon their individual merits.

6. The existing rule places a premium upon idleness during the time of education.

Thus it is urged that if two brothers A & B are educated for the bar, of whom one A fails to qualify and becomes a merchant and the other B succeeds and practises as a barrister, A's earnings would be his separate property, while B's would be partible though family funds have been equally expended in giving special education to both of them. It does not seem probable that a student in this country would be induced to neglect his studies by such considerations as this. A as a merchant without capital (for if he received a contribution from the patrimony to set him up in trade his profits would be joint property) would probably make less than B as a Barrister and his social status would be inferior.

7. The rule that the savings of a learned member of a family are liable to partition tends to make him extravagant or to promote resort to fraudulent concealment of his earnings.

This argument applies only to the

This argument proceeds in part upon the assumption that the learned member of the family is the chief means of its support, the other members being wanting in industry and in a position to make self-acquisitions. If however the other members have been placed in business with a trifling contribution from the patrimony as capital, all that they earn will be joint property and the change in the law will constitute no incentive to increased effort but rather the reverse in asmuch as they will no longer be entitled to a share in the acquisitions of the learned member and will feel aggrieved at the idea that he should share in any part of their savings while they have no claim to any portion of his earnings.

3. The Bill will tend to raise the credit and status of the educated members of the community.

It is no doubt the case that the educated will be benefited by the proposed measure but the question is whether it is just that their position should be improved at the expense of the less fortunate members of the family.

4. The gains of special learning have become trifling now that education is widespread and are the result rather of natural ability and industry than of actual education.

Granting that this is true, it is necessary to justify a change in the law and to provide for those cases in which the gains are directly

that such learning was imparted to him by any member of his family or with the aid of family funds or that he or his family was maintained out of family funds while he was acquiring such learning. These provisions are retrospective and apply to acquisitions made before the commencement of the Act subject to certain safeguards specified in sec. 4 of the Bill. It now remains to discuss the chief arguments which have been adduced for and against the Bill.

In Favour of the Bill

1. It will remove the existing uncertainty of the law which promotes litigation and disturbs the harmony of joint families and has a tendency to force a learned member to become divided or to conceal acquisitions made by him or to invest them benami when otherwise he might be willing to leave the ancestral property intact for the common benefit of the family.

This argument is open to the criticism that any legislative enactment would be equally efficacious in making the law certain.

2. The Bill would if passed into law foster a spirit of individual enterprise and self-reliance as it will secure the fruits of his individual efforts to the acquirer and will thus ultimately stimulate other members of his family to support themselves.

This

correct than what appears to be the doctrine of the Courts of Madras." This observation has been construed to indicate their Lordships' opinion that it is only the gains of special learning as opposed to those accruing from ordinary general education which should be regarded as divisible among the family. In 1881 this view was taken in the case of Boologam v. Swornam where the Madras High Court found that property acquired with income derived from prostitution by a Hindu dancing girl who had received the ordinary education in music and dancing was not partible, it having been found that her earnings were acquired without detriment to the family estate and without any scientific acquirement having been imparted with the aid of the family funds

It would appear therefore that in Madras the law for the time being is that acquisitions by means of learning imparted at the family expense constitute the separate property of the acquirer if the learning imparted was of an ordinary description, but formed part of the joint family property if the learning imparted was special or extraordinary. The Bill now under consideration defines learning so as to include all classes of learning whether extraordinary or ordinary and provides that the gains of learning made by a member of a Hindu family shall be held to be his exclusive and separate property notwithstanding the fact

that

found that he received from his father nothing more than an ordinary general education. In Mr. Justice Holloway's judgment in that case the following sentence occurs. " I fully adhere x x "to the statement that the ordinary gains "of science by one who has received a "family maintenance are certainly parti- "ble". In 1877 however a case involving a somewhat similar issue came before the Judicial Committee of the Privy Council, Pauliem v. Pauliem, I.L.R., I, Madras, 352. No direct decision upon the principal points was necessary, but their Lordships' judgment contains the following obiter dictum "It does not be- "come necessary to consider whether the "somewhat startling proposition of law "put forward by the appellant -which "stated in plain terms amounts to this- "that if a member of a joint Hindu fami- "ly receives any education whatever from "the joint funds, he becomes for ever- "after incapable of acquiring by his own "skill and industry any separate proper- "ty is or is not maintainable. Very "strong and clear authority would be re- "quired to support such a proposition." Then Their Lordships then go to comment upon a different view of the law laid down in a Bengal case and continue "It may hereafter possibly become neces- "sary for this Board to consider whether "or not the more limited and guarded ex- "pression of the law upon this subject "of the Courts of Bengal is not more

foregoing is an
The ~~working is the~~ amplification of the general rule laid down by Manu in these terms. "What one brother may "acquire by his labour without using "the patrimony, that is an acquisition "by his own effort ~~and~~ he shall not share "it ~~except~~ with his brothers except by "his own choice." The next point to consider is the present state of the law in this Presy: in regard to the gains of learning as opposed to other self-acquisitions. The Statement of Objects and Reasons attached to the Bill reviews the various rulings on this topic not only in the Madras Courts but in the courts of Bengal and Bombay and in the Privy Council. As the Bill will be applicable only to the Madras Presy:, it is however unnecessary to consider in detail other than Madras cases. The leading case until recently was Chalakonda Alasani v. Chalakonda Ratnachellam, II, Madras High Court Reports, 56. In this the majority of the Court including Mr. Justice Holloway held "that the gains, at all events the "ordinary gains of learning and science "which have been taught at the expense "of family funds or by any member of the "family, were divisible among all mem- "bers of the family" In a later Madras case Gungadharudu v. Narasammah, VII, Madras High Court Reports, 47, it was held that the earnings of a Vakil were divisible on the ground that they were the result of education imparted at the family expense although it was

I must be admitted, I think, that it is by means of such partial legislation as is now proposed that the Hindu law must be moulded & developed, if at all, to suit the advancing needs of Hindu Society. For such amendments of the law are to be undertaken the conditions of Hindu Society will not be stereotyped for all time - Considering the stagnation into which Mussalman society throughout the world has been brought by the Mussalman doctrine of the immutability of revealed law it cannot be desired that the Hindu community of some 200 millions of persons should be brought into the same state. I think we should thankfully accept & assist with at least a benevolent neutrality the efforts of enlightened Hindu gentlemen to move their community forward out of the groove in which it has long run.

In this instance the quality of the opinions for the proposed legislation seems to me even more remarkable than even its quantity.

A reform of India seems necessary

BS
9/4/97

therefore that there is no obligation to obtain the sanction of the Govt. of India, to the framing of it. But, I consider it would be expedient to submit the Bill, with all the papers concerning it, to the Govt. of India, before authorizing the Hon. Bhashyam Iyengar, to proceed with it.

A.G.H 29.12.96

I agree with H.E. as to the effect of the Bill. It is clear that almost all educated Hindus are in favour of it, & that other Hindus are not strong against it; even they do not allege that it will do any harm to the Hindu religion. The case for the Bill seems to me even stronger than that for the Malabar Marriage Law. I think however that we shd not accord our support to the Hindu Inheritance Bill", but shd regard it with "benevolent neutrality" as we did the Malabar Marriage Bill. I see no need for a special reference to the Govt of India about the Bill, which they know has already been introduced, but I do not remember the terms of the letter referred to in the antepenultimate para of the Note

JS 4/1/97

H.H. wishes. 21.22 Jan. 17.3.97.

community. The orthodox Hindu of the old school whose prejudices it affects is not likely to raise much clamour in the matter, but a perusal of the opinions on the Bill which have been received certainly leads to the conclusion that Hindus of this class are opposed to the legislation contemplated.

A brief summary of the purpose of the Bill and the arguments for and against it is appended. Under the Hindu law in force in this Presy: as expounded by Sir T. Muthuswami Aiyar, the general rule in regard to self acquired property in the joint Hindu family is indicated in the following extract.

"Whenever property other than "gains of learning is claimed to be "self-acquired in a partition suit, "we enquire whether the acquisition "was made by the claimant by his own "exertion or with his own earnings or "whether his co-parceners assisted him "or joint property was used in making "the acquisition. In the one case we "pronounce the property in dispute to "be self acquired and not partible and "in the other we hold that it is joint "and partible." But we do not enquire "whether the acquirer or his wife "was maintained by the joint family or "from joint property when he made the "acquisition, nor do we treat any aid "rendered to the acquirer material un-"less it is directly instrumental in "acquiring the property and becomes "thereby the a joint cause of the "acquisition."

list, 16 are opposed to the Bill viz.- Nos. 1-8 & 10-17 in the second category given in the Hon: Member's letter. On the other hand 27 are in favour of the Bill. But it is to be remarked that at least 4 of the latter express a very qualified approval, No.6 in the Hon: Member's first list seems sums up his conclusions in the words " On the whole "it seems to me that the proposed bill "while it is suggested by the dictates "of natural justice can scarcely be con-"sidered to be repugnant to the spirit "of Hindu Law."

No. 18 concludes "On the whole "I am in favour of the Bill in question "and I do not find any weighty objections "to it.

No.30 on a careful consideration is inclined to believe that the good accruing from the Bill will outweigh any possible harm which might arise.

No.36 writes of the bill as fraught with mischievous consequences and detrimental to the interests of the poor members of the family if they become often orphans at a season when they should be put to education.

It cannot be said that the Bill has awakened either enthusiastic support or vigorous opposition. That it should not awaken vigorous opposition is not surprising in view of the fact that the proposed measure is not one which is calculated to arouse the disapproval of the Congress party and of the highly educated section of the

Dewan Bahadur R. Raghunatha Rao
M.R. Ry Subrahmanya Iyer,
" " S. Kalyanasundaram Chettyar,
" " V. Srinivasa Charlu
" " P. Chentsal Rao Pantulu garu
The Hon. N. Subba Rao Pantulu garu
M.R. Ry. Rao Bahadur C. Venkata Chariar
" " Ramakrishna Iyer.

I have also found valuable help in this excellent Note. I think the balance of the arguments adduced is on the side of those who favour the Bill. The Bill is supported by a large body of learning and intelligence. The measure is, I think, calculated to abate abuses and inconveniences and to open the way for wholesome social progress. There are doubtless objections to the measure, but I am not much impressed by their importance, and I notice that even those who put them forward, do so, in some cases, in a somewhat faint-hearted way.

I gather not only from the written statement of the Hon. Bhashyam Iyengar, but also from the information given to me verbally by the Hon. Justice Subrahmania Iyer that the Hindu law as to Gains of Learning differs in Madras from the law in Bengal and other Provinces; and I therefore think, the Bill should proceed in the Local Legislative Council.

It seems clear that the Bill contains nothing which affects the Hindu Religion. I understand, therefore,

of the names of Hindu authorities to be consulted; in reply a list of 45 names was sent in (G.O.No.47, d/ 31-8-92) upon which Sir Henry Stokes remarked "the list is a good one but one-sided. It contains all or nearly all of the representative men of the modern educated or young India school but is deficient in names of men who would give us the opinion of the orthodox and non-progressive Hindu societies. However I don't know how to get at that opinion and if a large majority of the men named support the bill the fact will be enough to justify it."

43 of the 45 gentlemen consulted have replied and their remarks are printed in G.O. d/ 22nd Feb: 1893, No.13, which also contains the views of one or two literary associations and a memorial "from the citizens of Madras" vide pages 2 to 5 .

It was apparently directed by H.E. the Governor that the Judges of the High Court should be consulted at the same time, but by some oversight, this was not done, though the opinions in 1892 received include those of two Hindu Judges of the Court. The question now for decision is whether Govt. should accord its support to the Hon'ble Member's Bill and upon the decision of this question will depend the nature of the letter to be addressed to the Govt. of India on the subject.

Of the 43 gentlemen whose names are specified in the Hon: Bhashyam Aiya-

"as part of their religious code," and thus required no sanction under sec:43 of the Indian Councils Act.

When this despatch was circulated a majority of the Government noted that the Government of India should be asked whether " it was considered that sanction "under section 43 of the Statute was "required", but the matter being brought up in Council it was ultimately decided to refer the Despatch to the Honorable Bhashyam Aiyangar for remarks and to ask him to suggest in what manner the feelings of the Hindu Public should be ascertained. His reply to this reference will be found printed at pages 5-8 of G.C.No 13 dated 22nd February 1893; it discusses the Secretary of State's despatch and finally suggests that (1) the Judges of the High Court, (ii) other Judicial officers of experience and (iii) several leading native gentlemen should be consulted. The Honorable Member in this connection remarked that " the exact scope and object "of the proposed measure is not understood except by a small section repre-"senting the enlightened and educated "portion of the community . . . . and that "as far as any public opinion exists in "this country among the orthodox natives "it can be ascertained only through the "medium of leading natives who occupy "a prominent position in the public ser-"vice and in other walks of life."

Govt. accepted this view and asked the Hon: Member to furnish a list

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE.

[G. / 25]
1,000—8-11-93

Legislative DEPARTMENT

C. No. 5 (attached)
+ 90. 13 Legte 7 22. 2. 93

FOR ORDERS.

*. It was received in manuscript early in January + then printed, the corrected proof being received from the Hon'ble Member at the end of the month. The subject being a difficult one, + the papers lengthy, I was unable to complete this note at an earlier date, especially as other more urgent legislative + Revenue work had a prior claim on my time

K.R.
27. 3. 93

The observations made by the Hon. Mr. Bhashyam Aiyangar in the Note attached to his letter of the 2nd May 1892 (See G.O. 22nd Oct. 1893, No. 13, Legl., pages 6 and 7) as to the direction which legislation should take in the matter of Hindu Law, seem to me to throw out a new line of thought, deserving careful attention. He thinks it the duty of the Legislature to advance the Hindu Law and adapt it to the conditions and sentiments of modern Hindu Society, without of course doing violence to any of its fundamental or leading principles. He calls attention

This current forms the Hon: V. Bhashyam Aiyangar's reply* to G.O. No. 13, d/ 22-2-93 in which he was requested to comment on the opinions of certain Hindu gentlemen who were consulted regarding his "Hindu "Gains of Learning Bill". The Bill was introduced into the Council some five years ago and when a copy of it was, as usual, sent home to the Secy: of State, Lord Cross pointed out that it related "to a question of great importance and "interest to all Hindus, not only in the "Madras Presy:," and remarked that "any "legislation respecting it must be under "taken with the greatest caution". His Lordship accordingly hinted that it would be desirable to "ascertain the opi- "nion of the Hindu community at large on "the question, especially the opinion of "those classes who are most interested in "the alterations proposed." Finally the Despatch enquired whether the Madras Govt: had satisfied itself that the measure involved no alteration in a law "which "the persons governed by it might regard

[L&M. 300—3-12-96.]

NOTE FOR THE ~~SECRETARY.~~ Hardinge

With reference to the last para. of the H.M.G. note of the 4th Jan.y, please see letter on G.O. No 21-22 d 17 March 93 placed below.

S.V.L. 6/1/97

With reference to this letter a copy of the order noted passed and be sent to the G of I.

J.G. 7/1/97

e 7/1/97 R 11/1/97

[L&M. 300—3-12-96.]

NOTE FOR THE ~~SECRETARY.~~ Hon'ble Sir

With reference to the last para. of the H.H.'s note of the 4th Jan.', please see letter on G.O. No 21-22 d 17 March 93 placed below.

8/1/97

With reference to this letter a copy of the order noted passed and be sent to the S of S.

7/1/97

No. , LEGISLATIVE, JANUARY 1896.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From the Hon'ble V. BASHYAM IYENGAR, to the Assistant Secretary to Government, Legislative Department, dated Madras, 6th January 1896.

I have the honour to acknowledge receipt of Proceedings of Government, No. 13, Legislative, dated 22nd February 1893, and to submit the following remarks on the replies received from the various gentlemen consulted and certain petitions concerning the Gains of Learning Bill. The names of the gentlemen and associations that are in favour of the Bill, as well as of those who either are opposed to the Bill or deem it unnecessary, are given below:—

For the Bill.

		Pages of the Procs. of Govt.
(1)	The late Justice Sir T. Muthusawmy Iyer, High Court Judge, Madras	55 to 58
(2)	The Hon'ble Justice S. Subrahmania Iyer, C.I.E., High Court Judge, Madras	24
(3)	Sir K. Seshadri Iyer, Diwan of Mysore	45 & 46
(4)	Dewan Bahadur R. Raghunatha Rao, late Diwan of Indore and retired Deputy Collector, Madras	9
(5)	The Hon'ble Dewan Bahadur S. Srinivasa Raghavaiyangar, C.I.E., Inspector-General of Registration, Madras	16
(6)	Dewan Bahadur T. Venkasamy Rao, retired First Assistant, Revenue Secretariat	15
(7)	The late Rao Bahadur P. Runganadha Mudelliar, M.A., Professor, Presidency College, Madras	48 & 49
(8)	M.R.Ry. A. Ramachandra Iyer, Judge, Chief Court, Mysore.	27 & 28
(9)	Rao Bahadur S. Seshayya, Professor, Kumbakónam College, and Tamil Translator to Government	46 & 47
(10)	Rao Bahadur R. Rama Subba Iyer, High Court Vakil, Madura	48
(11)	Rao Bahadur C. Gopala Nayar, Subordinate Judge	28 & 29
(12)	M.R.Ry. P. Somasundaram Chettiyar, late President, Pachaiyappa's Board of Trustees	8
(13)	M.R.Ry. K. C. Manavedan Raja, Statutory Civil Service	15 & 16
(14)	Dewan Bahadur R. Dhurma Rao Naidu Garu, Deputy Commissioner, Salt and Abkári, Northern Division	25
(15)	M.R.Ry. Rama Varma Raja, Raja of Parapanad	8
(16)	„ S. Gopalacharriar, Subordinate Judge	12 & 13
(17)	„ D. V. Ramayya Pantulu Garu, Government Pleader, Berhampore	18 & 19
(18)	„ C. Sury Iyer, retired Subordinate Judge	19 & 20
(19)	„ V. Jagannatha Rao Pantulu Garu, Deputy Collector	21 & 22
(20)	„ V. Rajagopala Charriar, Deputy Collector	30 to 32
(21)	„ S. Kalyanasundaram Chettyar, Deputy Collector	32 & 33
(22)	„ T. Pattabhi Rama Pillai, retired Deputy Collector.	33 to 35

For the Bill—contd.

		Pages of the Procs. of Govt.
(23)	M.R.Ry. V. Srinivasacharlu, Subordinate Judge	35 & 36
(24)	„ S. Narayanaswami Chettyar, Diwan of Venkatagiri Samasthanam	36 & 37
(25)	„ M. Srinivasa Rao, Deputy Collector	37 to 39
(26)	„ M. V. Sundara Rao, Subordinate Judge	39 & 40
(27)	„ K. P. Sankara Menon, High Court Vakil, Madras.	40 & 41
(28)	Citizens of Madras	3 & 4
(29)	Literary Association, Cocanada	1
(30)	Berhampore Association	2
(31)	Coimbatore Bar Association	3

Against or not in favour of the Bill.

(1)	M.R.Ry. P. Chentsal Rao Pantulu Garu, C.I.E., retired Superintendent of Stamps, Madras, and late Councillor of the Council of the Maharaja of Mysore	25 to 27
(2)	„ A. Seshiah Sastriar, C.S.I., Retired Diwan of Travancore and Diwan-Regent of Pudukkóttai ..	37
(3)	„ C. Ramachandra Iyer, retired District Judge ..	29 & 30
(4)	Raja G. N. Gajapathi Rao, C.I.E.	41 & 42
(5)	Dewan Bahadur P. Srinivasa Rao, Judge, City Civil Court, Madras	43 to 45
(6)	Rai Bahadur A. Sabapathy Mudelliar, Bellary	47
(7)	Rai Bahadur P. Ramasamy Chettyar, Revenue Officer, Madras Municipality	49
(8)	The Hon'ble N. Subba Rao Pantulu Garu, High Court Vakil, Rajamundry	48
(9)	M.R.Ry. A. Sankariah, retired Diwan Peishcar, Cochin ..	1
(10)	„ K. Krishnaswamy Rao, Chief Judge, Travancore..	9
(11)	„ C. Nagoji Rao, Inspector of Schools of Rajahmundry	9 & 10
(12)	„ P. Pundarikkashudu Garu, Deputy Collector ..	11 & 12
(13)	„ K. Subba Rao Pantulu Garu, Deputy Collector ..	13 & 14
(14)	„ Rao Bahadur C. Venkoba Charriar, Subordinate Judge	20 & 21
(15)	„ R. Subramania Iyer, District Registrar	22 to 24
(16)	„ A. Venkata Ramana Pai, Subordinate Judge ..	42
(17)	„ M. R. Ramakrishna Iyer, High Court Vakil, Tinnevelly	49 to 55

It will be observed that twenty-seven gentlemen and four associations support the Bill and seventeen gentlemen oppose the same or do not support it. In the Statement of Objects and Reasons appended to the Bill, as well as in my speech while introducing the Bill, I have fully explained the Smriti law as well as the case law on the topic of gains of learning and showed how impracticable it would be to decide, in each particular case as it arises, whether the education by means of which property was acquired by a Hindu was ordinary or scientific, and how problematical it would be to decide in the great majority of cases, years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the proposed measure is in conformity with the Smriti or original sacred law on the subject, and that its primary object is to remove the existing uncertainty in the application of this branch of Hindu law. I beg to invite special attention to the opinion on the Bill recorded by the late Sir T. Muthuswamy Iyer. He points out that according to some of the original Smritis, the use of patrimony contemplated for the acquisition of learning was a substantial use and one which was directly instrumental in the acquisition of property. Referring to the text of Catyayana, he points out that gains of ordinary learning imparted in the family or acquired whilst being maintained in the family are partible, but that what is acquired by means of superior learning or superior skill or merit is separate or exclusive property of the acquirer, because such learning, skill or merit was, in the opinion of Catyayana, personal.

Testing the Bill by the Smritis, Sir T. Muthuswamy Iyer says that it proceeds on the lines indicated by the Smritis, adapting them to the altered conditions of life, and also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *vs.* Poliem Suria Chetty, that the proposition of Hindu law put forward before their Lordships was startling, and that in plain terms it amounted to saying that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring, by his own skill and industry, any separate property; and the Bill, so far as it departs from the Mitakshara, refuses only to give effect to a rule which, as applied to the altered state of things, is characterized by the Judicial Committee as a startling proposition of law. The observation of the Privy Council in the above case is only an *obiter dictum*, though effect has been given to the same, to a certain extent, in one or two subsequent decisions, by the Bombay and the Madras High Courts. Referring to these decisions, and particularly to the decisions of the Bombay High Court, Sir T. Muthuswamy Iyer observes that they indicate a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu law, and an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter partible and thus to proceed in a direction which is the very reverse of what is indicated in the Smriti of Catyayana and to make the law more complex in its application. In conclusion, Sir T. Muthuswamy Iyer says as follows :—

> "The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning by bringing it into accord with the general law of self-acquired property in a joint Hindu family, without, at the same time, doing violence to the spirit of the Catyayana Smriti, but only adapting it to the altered state of things."

It will thus be seen that, according to the texts of Hindu law, the preponderance of authority is that the gains of ordinary learning is partible, but that the gains of superior or scientific learning are separate and impartible. This, in fact, was the view taken by the High Court (Holloway and Kindersley, J.J.) in the case reported in VII Madras High Court Reports, page 47 ; but the tendency of the later decisions is just the reverse, viz., that the gains of ordinary learning are impartible but that the gains of superior or scientific learning are partible. Considering, however, that the question has not yet been judicially considered by the Privy Council, it cannot be said to be unlikely, having regard to the texts of Hindu law, that the contrary view might hereafter prevail. This only shows how uncertain the present state of the law is on a question of the highest practical importance to Hindu families, and I may observe that the opinion of several who are opposed to the Bill proceeds on a misapprehension of the written law and of the case law on the subject. It is unnecessary that I should repeat here the reasons and objects of the Bill, which were fully stated and explained when the Bill was introduced, or the reasons assigned in support of the Bill by the gentlemen and associations that are in favour of the Bill, and I shall confine my remarks to the specific objections that have been raised to the Bill by some of the gentlemen to whom it had been referred for opinion. These objections may be summarised as follows :—

(i) That legislation on questions of Hindu law is objectionable and undesirable.
(ii) That the existing law provides a remedy by enabling any member of an undivided Hindu family to become divided if he be disposed to do so, and that the proposed legislation is unnecessary.
(iii) That heads of joint Hindu families will neglect the higher education of their minor brethren.
(iv) That the measure will lead to the breaking up of joint Hindu families.

(i) As regards the first objection, I have only to refer to the note appended to my letter, dated 2nd May 1892 (printed at pages 5 to 8 of the Proceedings of Government under reply), in which I have expressed my views on the question as to the direction which legislation should take in matters of Hindu law and on the advantages and desirability of piece-meal legislation from time to time on different topics of Hindu law which are of the gravest practical importance and which,

owing to their vagueness and uncertainty, open a wide door to unnecessary speculative and ruinous litigation, and that, having regard to different schools of Hindu law which prevail in different provinces and the difference in the conditions and sentiments of Hindu society in various provinces, provincial legislation is the only scheme which will be found practicable for the present and until a general codification of the Hindu civil law, with special chapters for special provinces, is found feasible.

(ii) The second objection is based on the provision of the Hindu law that any member of an undivided Hindu family may, as of right, become divided from the rest of the family, and that, by the exercise of such right, all acquisitions made by him after his separation from the family will become his exclusive and separate property. In cases in which all the members of the family voluntarily agree to all, or some, or one of them becoming divided, there will be no difficulty in one availing himself of the remedy. But in the very case in question—viz., of an earning member desiring to become divided—it will be the interest of the remaining members to obstruct and passively resist such a member from separating himself from the rest of the family: and the supposed remedy can be availed of only by an expensive and protracted law suit for a partition, until the final termination of which the status of the family as undivided will continue. A rule of law which is to be regarded as providing such a remedy can only have a tendency to force a member of a Hindu family to become divided, when otherwise he may deem it undesirable to do so. An earning member so long as he continues in the joint family and is not forced to become divided will materially assist the other members of the family in various ways, although they may not be entitled to claim a share in what he earns by his learning. If a choice were given to Hindu families between an earning member of that family becoming divided and his remaining a member of the family having exclusive right to his own earnings by learning, undoubtedly the option will invariably be exercised in favour of the latter. In this connection I may observe that the relative position between a Hindu father and his undivided sons is the same as that between undivided brothers, cousins, uncles and nephews, &c; and if a Hindu father wishes to have full control over his professional earnings and not be at the mercy of his sons in disposing of the same in favour of his wife, daughters or other relations, he should become divided from each of his sons soon after their birth. In truth, the supposed remedy is only a theoretical one and is worse than the disease, and, such as it is, it would be availed of more than it has been if there was any certainty or definiteness in the law that earnings by means of learning are partible. I may in conclusion add that, in the case of Malabar tarwads, even such a theoretical remedy does not exist.

(iii) The objection on the score that the proposed measure is calculated to affect prejudicially the cause of higher education in Hindu families is ingenious and fanciful, rather than real. It is admitted that, under the existing state of the law, a Hindu youth who has acquired superior and professional learning at a considerable cost to the joint family may separate himself from such family soon after he begins to earn by means of such learning, and yet such law has in no way deterred heads of joint families from educating at a great cost to the family, up to a high standard, such of the junior members as show an aptitude for such superior or scientific learning. If, under the existing law, earnings by means of ordinary or rudimentary learning are not partible, but belong exclusively to the acquirer, it may be with just as much force argued that the tendency of the recent decisions is to affect prejudicially the cause of primary or elementary education in Hindu families. Such reasoning, whether in the case of elementary or higher education, proceeds on the assumption that heads of families are actuated by a mercantile spirit in spending family funds for the education of junior members. Every family will feel proud of one of its members attaining eminence in any walk of life and the whole family will, in the vast majority of cases, be benefited in various ways by the success in life of one of its members, though they may not be entitled to claim a share or an equal share in the earnings of such member. It is a libel on human nature to suppose that in domestic and family relations, men are chiefly actuated by mercenary and sordid motives. In countries where the joint family system of the Hindus does not prevail, parents, brothers and other close relations are found generous enough, at a great cost to themselves, to secure the highest education possible to their children and other

relations, though they do not dream of claiming any share in the acquisitions resulting from such learning; and is it to be imagined that among Hindus, domestic affection and generous impulses towards members of their families are less strong than in other nations?

(iv) The last objection to be noticed is, that the measure is likely to lead to the breaking up of joint families. If that will be its effect, I know there are some who will welcome such a result. But, for my own part, I may state without hesitation that I am not prepared in the present state of the Hindu society to suggest or advocate any measure which would in any way be calculated to cause disintegration of the joint family system. Apart from what may be urged *pro* and *con* on such a question on economic and other grounds, it is enough to say that such a change will, at present, be revolutionary and out of the question. The existing system of joint Hindu families admits of, and has for ages admitted of, individual members thereof possessing self-acquired property which, being his separate and exclusive property, can be dealt with as he pleases, and which, in the event of his dying intestate, does not merge in the joint property of the family (except in the case of Malabar tarwads) but devolves by inheritance upon his separate heirs. The Bill introduces no change whatever in the joint family system and it only declares and defines one class of self-acquisitions, viz., acquisitions by means of learning. How this measure can in the least produce the apprehended result of breaking up the joint family system surpasses one's comprehension! If anything, it will have just the opposite effect, by not forcing a member of an undivided family who, by his learning, earns a great deal more than the other members, to break up the joint family and become divided in order that his future earnings may belong to him exclusively.

It is impossible to conceive any case in which a person, who, under the existing state of the law, would be content or elect to remain a member of a joint Hindu family, would be induced by the proposed measure to become divided from such family. On the contrary, I can well conceive of several cases in which a person who may, under the existing state of the law, be forced to break up the joint family and become divided if he wishes to have sole control over his acquisitions, would, under the proposed measure, not be obliged to take such a step, but might well be content or elect to remain a member of the joint family, in cases in which there may be hardly any patrimony to be divided, or the property to be divided may be very small, or for other reasons, the breaking up of the family may be undesirable. One or two objecting to the Bill do so on the ground that it does not go far enough and is restricted only to acquisitions by means of learning. In the first place, I may observe that the word "Learning" is defined in the Bill in its most comprehensive and enlarged sense, so as to include, not only the learned professions, but also all arts and professions, however humble they may be. As to other acquisitions, they must be the result of manual labour, or the combined result of manual labour and patrimony, or of professional skill or learning and patrimony. As to acquisitions by means solely of manual labour they are recognized as self-acquisitions by the Hindu law and no change, therefore, is needed in regard to it. Other acquisitions of which the proximate cause is not merely manual labour or professional skill and learning but patrimony also in a substantial degree do not form under the Hindu law self-acquisition, but partake of the character of patrimony. The Bill does not propose to alter this. Even if any alteration of the law in this respect were desirable, it will be a distinct departure from the Hindu law, and effect cannot be given to it without practically destroying the joint family system, nor will it be practicable to make an equitable apportionment of such an acquisition or improvement of the patrimony and ascertain what proportion thereof should be credited to patrimony and what proportion to labour, skill or learning. The Bill proceeds on the principle that the proximate cause, and not the remote cause, of the acquisition should be looked to in determining the character of the acquisition, and that any distinction which may be made, on the score of the learning being ordinary or special and scientific, is not only impracticable but one which may lead to opposite conclusions, according as you view it from the standpoint of the fund which was instrumental in securing education, or of the special and personal aptitude of the member who was benefited by the superior or scientific

learning. The personal law of a nation, in its bearing on domestic and family relations, should be such as to ensure honesty and fair dealing at home, but if the law, owing to its obscurity and uncertainty or any fault therein, is such that honesty does not begin at home, the sooner it is changed the better will it be for the development of the character of the nation as citizens. In the note appended to my letter already referred to, I suggested the desirability of referring the Bill to the Hon'ble the Judges of the High Court for an expression of their opinions, besides inviting the opinions of leading native gentlemen in the Presidency. But in the Proceedings of Government under reply, the opinions of native gentlemen to whom the Bill was referred for remarks, and as the memorials of certain bodies and associations, are alone printed.

Testing the Bill by the Smritis, Sir T. Muthuswamy Iyer says that it proceeds on the lines indicated by the Smritis, adapting them to the altered conditions of life, and also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *vs.* Poliem Suria Chetty, and that the proposition of Hindu law put forward before their Lordships was startling, and that in plain terms it amounted to saying that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring, by his own skill and industry, any separate property; and the Bill, so far as it departs from the Mitakshara, refuses only to give effect to a rule which, as applied to the altered state of things, is characterized by the Judicial Committee as a startling proposition of law. The observation of the Privy Council in the above case is only an *obiter dictum*, though effect has been given to the same, to a certain extent, in one or two subsequent decisions, by the Bombay and the Madras High Courts. Referring to these decisions, and particularly to the decisions of the Bombay High Court, Sir T. Muthuswamy Iyer observes that they indicate a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu law, and an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter partible and thus to proceed in a direction which is the very reverse of what is indicated in the Smriti of Catyayana and to make the law more complex in its application. In conclusion, Sir T. Muthuswamy Iyer says as follows :—

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Proof

16 February

Corrected & returned 27-1-96 VB

No. 14, LEGISLATIVE, JANUARY 1896.

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setting.

Here sutra Read - again papers

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

SECY. GOVT. MADRAS 27 JAN 96 REV. DEPT.

also/ READ—the following paper:—

From the Hon'ble V. BASHYAM IYENGAR, to the Assistant Secretary to Government, Legislative Department, dated Madras, 6th January 1896.

I have the honour to acknowledge receipt of Proceedings of Government, No. 13, Legislative, dated 22nd February 1893, and to submit the following remarks on the replies received from the various gentlemen consulted and certain petitions concerning the Gains of Learning Bill. The names of the gentlemen and associations that are in favour of the Bill, as well as of those who are either opposed to the Bill or deem it unnecessary, are given below:—

For the Bill.

		Pages of the Procs. of Govt.
(1)	The late Justice Sir T. Muthusawmy Iyer, High Court Judge, Madras	55 to 58
(2)	The Hon'ble Justice S. Subrahmania Iyer, C.I.E., High Court Judge, Madras	24
(3)	Sir K. Seshadri Iyer, Diwan of Mysore	45 & 46
(4)	Dewan Bahadur R. Raghunatha Rao, late Diwan of Indore and retired Deputy Collector, Madras	9
(5)	The Hon'ble Dewan Bahadur S. Srinivasa Raghavaiyengar, C.I.E., Inspector-General of Registration, Madras	16
(6)	Dewan Bahadur T. Venkasamy Rao, retired First Assistant, Revenue Secretariat	15
(7)	The late Rao Bahadur P. Runganadha Mudelliar, M.A., Professor, Presidency College, Madras	48 & 49
(8)	M.R.Ry. A. Ramachandra Iyer, Judge, Chief Court, Mysore.	27 & 28
(9)	Rao Bahadur S. Seshayya, Professor, Kumbakónam College, and Tamil Translator to Government	46 & 47
(10)	Rao Bahadur R. Rama Subba Iyer, High Court Vakil, Madura	48
(11)	Rao Bahadur C. Gopala Nayar, Subordinate Judge	28 & 29
(12)	M.R.Ry. P. Somasundaram Chettiyar, late President, Pachaiyappa's Board of Trustees	8
(13)	M.R.Ry. K. C. Manavedan Rajah, Statutory Civil Service	15 & 16
(14)	Dewan Bahadur R. Dhurma Rao Naidu Garu, Deputy Commissioner, Salt and Abkári, Northern Division	25
(15)	M.R.Ry. Rama Varma Rajah, Rajah of Parapanad	8
(16)	„ S. Gopalacharriar, Subordinate Judge	12 & 13
(17)	„ D. V Ramayya Pantulu Garu, Government Pleader, Berhampore	18 & 19
(18)	„ C. Sury Iyer, retired Subordinate Judge	19 & 20
(19)	„ V. Jagannatha Rao Pantulu Garu, Deputy Collector	21 & 22
(20)	„ V. Rajagopala Charriar, Deputy Collector	30 to 32
(21)	„ S. Kalyanasundaram Chettyar, Deputy Collector	32 & 33
(22)	„ T. Pattabhi Rama Pillai, retired Deputy Collector.	33 to 35

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[G / 9]
2,000—12-8-95.

Circ 5.

D.O
~~Current~~ No: 6

DEPARTMENT.

From Hon'ble V. Bashyam Iyengar.

No.

Dated 6-1-96.

Received ~~6-1-96~~
Regd 7-1-96

Enclosures 1.

SUBJECT.

Forwarding his reply to the Proc^s of Govt 13 Legislative and 22nd Feb 1893 requesting that the same may be circulated to the members of the Govt. soon.

Submd Bills.
with revised proof copies
CW
31/1/96.

Govt. of {1893} Madras.

LEGISLATIVE.

Issued

Read. *Encl.*

G.O., 22nd February 1893, No. 13.

FEBRUARY.

Hindu Gains of Learning Bill.

Referring, for remarks, to the Honorable Bhashyam Aiyangar opinions of certain Hindu gentlemen consulted regarding the —.

[G/9]
2,000—12-8-95.

Cco 5.

D.O
~~Current~~ No: 6

E

DEPARTMENT.

From Hon'ble V. Bashyam Iyengar.

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Enclosures 1.

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Submitted Bills.
with revised proofs & fees
CRV
31/1/96.

were then hereditary under the rules of caste, and several brothers, living together and receiving instruction from their father or uncle or another brother, followed a common caste profession, treated what they earned by the ordinary exercise of the family profession as partible amongst them, but treated the special earnings mentioned in the Smriti as their exclusive property. It is apparently with reference to this usage that Catyayana made a distinction between ordinary and special earnings of learning and treated the latter as separate and the former as partible property. He declared the principles mentioned above applicable to all elegant and liberal arts and also to cases in which there was only an increase of price by superior skill. Thus, if an article was made to order, its ordinary price was considered partible because it was made with the aid of knowledge imparted in the family, whilst any excess price or reward given on account of superior skill in making it was declared to be separate property. This shows that what Catyayana intended to do was to declare all special earnings, whether due to superior learning or superior skill or merit to be separate property because such learning, skill or merit was in his opinion personal and to declare in deference to the usage all ordinary earnings due to the exercise of the common caste or family profession partible, unless the learning necessary to the exercise of that profession was imparted and maintenance was provided by a stranger as was occasionally the case. The Bill purports to acknowledge the first rule and to repeal the second and the usage on which the second rule was founded has now undergone a considerable change. Professions are no longer hereditary as was formerly the case and the influence of caste in this respect has passed away except perhaps among artisans and mechanics. Even amongst them the proposed legislation will not be unpopular since they generally work separately when there is considerable inequality in their earnings. In an orthodox Brahmin family, different brothers now follow different professions and there is a considerable disproportion between their earnings. This renders a rule originally applied to the ordinary earnings of the profession prescribed for each caste inapplicable to the altered state of things. Testing the Bill by the Smrities, I come to the conclusion that the proposed legislation proceeds on the lines indicated by the Smrities, adapting them to the altered conditions of life and that so far as the Bill repeals the limitations mentioned in section 3, it repeals only such Smrities as are probably referable to a period, when owing to the strong predilection for joint family, even slight aid from the family or its funds was considered sufficient to make gains of learning partible. The Bill proceeds also on the lines indicated by the observations of the Privy Council in Pauliem Veloo Chetty *v.* Pauliem Sooria Chetty that the proposition of Hindu Law put forward before their Lordships was startling and that in plain terms, it amounted to this, that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property.

Though this is only a dictum of the Privy Council and though the Judicial Committee did not consider it necessary in the case before them to examine the texts, yet it shows how the second rule of Catyayana now operates in practice. It must, however, be stated that there is some authority for the proposition animadverted upon by the Privy Council in the Mitakshara. In chapter I, section IV, v. 8, the author relies on the texts of Narada and Catyayana and adopts the rule of Catyayana that unless wealth is gained by science which was acquired from a stranger while receiving a foreign maintenance, it is not an acquisition through learning. It was this passage in the Mitakshara and the Smrities mentioned therein on which the decisions in Madras and Bombay had rested prior to the date of the Privy Council decision. I have, however, explained that this rule originally had reference to those cases in which the gains of learning were ordinary and acquired in the exercise of the prescribed caste profession, no superior learning, skill or merit being the cause of the acquisition. The author of the Mitakshara himself refers in support of his opinion to "received practice." The Bill then, so far as it departs from the Mitakshara, refuses only to give effect to a rule, which, as applied to the altered present state of things, is characterized by the Judicial Committee as a *startling* proposition of law.

In the cases decided by the Bombay High Court and the Madras High Court subsequent to the decision of the Privy Council, it has been ruled that mere rudimentary or ordinary education imparted at the expense of the family cannot render what

was acquired by learning by one of them partible and thus effect has been given to the observation of the Privy Council. The decision of the Bombay High Court, however, indicates a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu Law. What Catyayana says is that the ordinary gains of learning are *partible* when the learning is imparted in the family or maintenance is provided at the family expense, whereas what the Courts hold in deference to the dictum of the Privy Council which embodies a rule of reason rather than the conventional notion of the Hindu Law, is that such gains are *separate* property. Again, Catyayana says that special gains by superior learning, superior skill or superior merit are separate property; but there are observations in the decision of the Bombay High Court which indicate an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter *partible*. There is therefore ground for the assertion that the tendency of the decisions of Courts is to proceed in a direction which is the very reverse of what is indicated by the Smriti of Catyayana and to make the law more complex in its application.

The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning, by bringing it into accord with the general law of self-acquired property in a joint Hindu family without at the same time doing violence to the spirit of Catyayana Smriti, but only adapting it to the altered state of things.

ORDER—22nd February 1893, No. 13, Legislative.

The replies received from the various gentlemen consulted and certain petitions concerning the Bill which have been received by Government will be referred to the Honorable V. Bhashyam Aiyangar, Rai Bahadur, with the request that he will favour Government with such remarks upon them as he considers necessary.

(True Extract.)

A. BUTTERWORTH,
Ag. Under Secretary.

To the Honorable V. Bhashyam Aiyangar, Rai Bahadur.

Exd. W. H. French.

Govt. of {1893} Madras.

LEGISLATIVE.

Issued

Read. *Encl.*

G.O., 22nd February 1893, No. 13.

FEBRUARY.

Hindu Gains of Learning Bill.

Referring, for remarks, to the Honorable Bhashyam Aiyangar opinions of certain Hindu gentlemen consulted regarding the —.

of learning are now treated as separate property and whether it is expedient to repeal those conditions. The Smrities, the commentaries and the decisions bearing on the subject are cited by the Honorable Mr. Bashyam Aiyangar in his speech in the Legislative Council and it is hardly necessary for me to recapitulate except for the purpose of indicating the conventional family notions embodied in them.

There are three classes of Smrities which bear on the subject and the first of them shows how the notion of self-acquired property attained development under Hindu Law. The modern joint Hindu family was once patriarchal in its type and the prevalent family notion was that the head of the family was the absolute owner of all that belonged to it, and that what each member of the family acquired by his own exertion belonged to its representative. In a Smriti attributed to Menu, the wife, the son and the slave are said to have in general no wealth of their own and what they acquire is declared to belong to the person to whom they belong. At this period no notion of self-acquired property was possible.

The patriarchal family, however, since ceased and the introduction of the law of partition changed it into the joint family. The first indulgence shown to the person who acquired property by his own exertion in such family is indicated by the text of Vasishta which says. "If one of the brothers acquires property by his own exertion, let him have a double share." The next change of the family notion is indicated by a Smriti attributed to Viyasa who states: "That brothers participate in that wealth which one of them gains by valour or the like, using common property such as a vehicle or weapon." At this time the family notion was that what a co-parcener acquired by valour was his exclusive property, but that the slightest assistance received from family property was sufficient to make it partible.

In consequence of the predilection felt in archaic times for the joint family, family property was guarded with extreme jealousy and it was even seriously discussed whether being nursed by a common mother and using a family plough rope was not sufficient aid from a family source. Another class of Smrities indicates a further stage of development. In the first paragraph of his text, Menu places property acquired by learning in the same category in which he places a gift from a friend and a present received on marriage, and in the second paragraph, he lays down the general principle in these terms: "What one brother may acquire by his labour without using the patrimony, that is an acquisition by his own effort and he shall not share it with his brothers except by his own choice". Yangyavalkya on whose Smriti the Mitakshara, which is the leading commentary in this Presidency, is based, expresses the same opinion and observes after referring to family property, "whatever else is acquired *apart from and without detriment to the paternal estate* as a friendly or nuptial present does not belong to the co-heirs. Nor shall he give up to his co-parceners what has been gained by science." It has been held upon the authority of these Smrities that the use of patrimony contemplated was a substantial use and one which was directly instrumental in the acquisition of the property. This is the furthest development which the law of self-acquired property has attained in a joint family and the Bill does not go beyond it.

There is another class of Smrities which it is necessary to mention in relation to gains of learning, viz., the texts of Catyayana, Narada, Brihaspati and Gautama. The text of Catyayana is full and it is sufficient to refer to it alone. Catyayana lays down three principles and first excludes what is gained by learning imparted in the family or acquired whilst being maintained by the family from the definition of gains of learning. The second principle is that what is gained by superior learning or superior skill or merit is separate property. The third principle is that a learned co-parcener need not share his gains by learning with his *unlearned* co-heirs. It is in this Smriti that the receipt of maintenance or instruction from the family is treated as making gains of learning partible property, but Catyayana limits that rule to ordinary gains by declaring that wealth gained by superior learning, merit or skill, is exclusive property and by making even the ordinary gains partible with other *learned* co-heirs only. From the instances he gives, he evidently refers to what was then considered among Brahmins to be special earnings of learning. Reading the Smriti in the light of usage which prevailed at that time, the text is clear and intelligible. Professions

Govt. of {1893} Madras.

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This is no doubt a possible remedy. But it is scarcely reasonable that a person who postpones such division should be made to pay a heavy penalty. And if self-acquired property of a certain kind belongs after such division exclusively to the acquirer and his heirs, the mere absence of a division cannot so totally alter the character of that property as to make it partible among brothers and cousins.

The same reasoning applies to all cases of self-ac

From Rai Bahadur P. RAMASAWMY CHETTIAR, to the Secretary to Government, Legislative Department, dated Madras, 9th January 1893.

I was duly favoured with your Circular No. 47, of the 31st of August last (with its enclosures), inviting my views on the "Bill to declare gains of learning by a Hindu to be his separate property," which the Honorable V. Bhashyam Aiyangar had obtained permission to introduce into the Local Legislative Council, and regret my inability to give the matter earlier attention.

2. The "distressing uncertainty" of this branch of the Hindu Law, which the Bill purports to remove, is not due to any very material difference of opinion either among the early text writers, or among the subsequent glossators, as to the fundamental basis of the law, which is but the equitable principle that patrimonial funds should not be utilized to the special advantage of any one coparcener more than that of any other, and that, if so used, it should accrue to the common benefit of all; but would seem to lie in the more or less liberal or conservative interpretations of the same text by different commentators and on the admixture of enlarged notions of equity manifested in judicial decisions based on one or other of such interpretations.

3. However desirable the institution of such a uniform rule as is contemplated by the proposed legislation may be in the interests of the educated few, the scheme, while professing to revive the equitable and liberal law of the old Smritis, practically ignores *in toto* the commentaries, which in general have actually taken their places, are recognized as binding, some in one, some in other parts of India, and have been hitherto accepted as guide in all judicial decisions.

4. Even were it expedient so to disregard such commentaries, it is impossible to conceive how the terms of the Bill, by which gains made by reason of any kind of "education whether elementary, liberal, technical or scientific and training of every kind which is usually intended to enable a person to follow any trade, profession or avocation in life" and acquired in whole or in part, with the aid wholly or partially of joint family funds, become the exclusive property of the acquirer, are in substantial accord with the original texts, which would never part with the fundamental principle above referred to, though some of the text writers concede a larger share to such gifted acquirer in consideration, probably, of the talent, intelligence and labour, which, perhaps, even more than patrimonial assistance, have contributed to the acquisition.

5. Such a radical character of the Bill is more likely to create further dissensions and misunderstandings than there are at present, than tend to promote cordiality of feeling so essential in aid of progress among members of joint families, to whose social usage the fabric of the joint family system is so well adapted.

6. Moreover, the ulterior object of the proposed measure of securing the gains to the personal heirs of the acquirer would be frustrated, unless the restrictions to which widows' rights are now subject were removed by a project probably involving revolutionizing one other branch of the Hindu Law.

From M.R.Ry. M. R. RAMAKRISHNA IYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Tiruchendúr, 12th January 1893.

I have the honour to submit the following on the Hindu Gains of Learning Bill.

There is a considerable amount of uncertainty in connection with this branch of the Hindu Law, and any measure that is calculated to minimize the litigation in respect

of acquisitions by learning, cannot but prove useful to the Hindu community. Towards the close of the Statement of Objects and Reasons, other cogent grounds have also been assigned by the Honorable Mover of the Bill and the force of many of them cannot be denied.

2. But the question is, whether it is necessary or even desirable that the Legislature should interfere in matters of this kind. This question is of far greater significance than would at first sight appear; for the measure proposed is much more than an authoritative interpretation of doubtful passages in Hindu Law—it is in fact an *alteration* or amendment (in form and in substance) of the Hindu Law as at present interpreted and understood.

3. We generally understand the original Hindu Law texts with the light thrown on them by the recognized commentaries, and without attempting to settle independently of these commentaries what the intention of the lawgivers was, it is enough to observe that almost all the recognized commentators (the author of the Mitakshara among them) are agreed, on the authority of the texts as interpreted by them, that acquisitions made by learning or science, where the same has been imparted at the expense of the joint family, are partible. This interpretation is only in conformity with the general principles connected with coparcenery, and the different High Courts have construed the law in the same way.

4. In this state of things the present Bill cannot but be regarded as an entire *alteration* of the existing Hindu law on the subject, and as such is open to objection on general grounds.

5. Up to this time the Legislature has not materially interfered with the substantive law laid down by the Hindu lawgivers in regard to property, except perhaps in the two instances of Act XXI of 1850 relating to the inheritance of excommunicated persons, and Act XV of 1856 relating to widow marriages. These two exceptional cases stand on quite a different footing from the measure now proposed and are the natural result of the principle of individual liberty and religious toleration.

Such instances of legislation (including the Act for the abolition of slavery) have their foundation on much higher ground than what forms the basis of any particular system of law prevailing in any one country, and they are such that a Government like the British could not but have legislated sooner or later for settling the matters comprised therein.

The other pieces of legislation, such as the Indian Majority Act and portions of the Evidence Act and the like, do not affect the provisions of the Hindu Law in regard to the *rights* of persons as to property.

6. And the present Bill, if passed into law, would be the first instance of direct legislative interference with the existing Hindu Law.

7. I need hardly discuss the abstract proposition as to how extremely undesirable it would be for the Legislature to disturb the course of the existing law of the country, and I have only to observe here that we have to be more than ordinarily cautious when we remember that the institutions in which our legislators in general have been brought up are so different from the institutions of this country, and that even the principles of natural justice cannot be universally applied quite irrespective of the time-honoured institutions of a country and the accepted ideas and consciousness of the people.

Again when once we break through the existing law, there is no saying where we will stop. The Bill, if passed into law, would, I am afraid, form an *important precedent* for other alterations or amendments being sought to be effected in Hindu Law on some ground or other.

This is a state of things which would hardly be liked by the community in general, or even by the educated section thereof.

8. In regard to the present Bill, it has further to be observed that compelling a person to give his brother a share of the acquisitions by learning (which learning has been imparted at the joint expense) is not contrary to any principle of natural justice or equity. Referring to the law on this point, the Bombay High Court observe:* "Nor having regard to the usage of Native Society do we think it is bad law." Mr. Mayne also observes:† "If a member of a joint Hindu family were sent to England, at the joint expense, to be educated for the Bar or the Civil Service, it seems *fair enough* that his extra gains should fall into the common stock as a recompense for the extra outlay incurred. It might be assumed that when the outlay was incurred the reimbursement was contemplated."

* *Vide* 6, B. H. C. R., A. C., p.p. 1 and 6.

† Mayne's Hindu Law, Fourth Edition, section 259.

9. The justice of this provision of Hindu Law follows directly from the general law of coparcenery. Since no member of a joint family can say before actual partition is made that he is entitled to any *definite share* either in the corpus of the whole family property or in its profits, the family is not bound to spend any portion of the property for the sole benefit of any one member; and when any large sum is actually spent in giving special education to an individual member, the sum must be considered to be spent on that person as a member of the corporate unity, and the earnings of that member ought therefore to go to the corporate body. And no member can reasonably complain of being deprived of the fruits of his learning, for were it not for the joint fund of the whole family, there would have been no learning to bear fruit. Again as a matter of fact no such educated member remains undivided during the whole of his life.

10. And besides, a consideration of the present circumstances of the country necessitate the continuance of the existing law, notwithstanding that we may suffer certain disadvantages thereby. The country is poor, and it is well known that by far the greater portion of the people who are anxious to impart good education to their children are also comparatively poor, while education is becoming costly and proper education for any special profession is felt to be far more costly. In this state of matters it is idle to expect the parents or other relatives to spend any large sum of money for the education of a boy, unless they can entertain the hope that by that means the prospects not only of the particular boy but of the family as a whole will be improved; and in many instances it would not be considered a prudent expenditure (even where the parents are willing to spend) unless the whole family hopes to be benefited.

11. Moreover, the boys have very often to look to the care and good sense of their uncles and elder brothers for guiding their education, and even where the boys may be themselves anxious to obtain proper education eventually to fit them for any profession, they are simply helpless as they have no independent voice in a joint family. And it is extremely unlikely that the uncles or brothers would be disposed to spend money knowing fully well (and they must know, if the Bill should become law) that the whole of the acquisitions by learning are to go exclusively to the earning member *from the very moment such earning should commence.*

12. But it is said that however reasonable and just the hopes and expectations of the other members may be, they are under the existing law liable to be frustrated by the person to whom the learning has been imparted choosing to become divided from his coparceners as soon as he completes his education, and thus to appropriate exclusively to himself the fruits of his learning. This is no doubt *a possibility*; but it seldom so happens in actual practice. It is in such cases more than in others that the educated member experiences feelings of delicacy, which together with moral and other considerations, including the public opinion (so to say) of his own circle, are too strong for him to press for a division at once. Experience shows that the educated member generally waits for a few years before demanding partition, and the acquisitions or gains of science made in the interim naturally go to the whole family.

13. Granting for the sake of argument that instances of the educated members dividing off immediately on completion of education may *hereafter* become more frequent, how does the Bill better the present condition of things? Under the existing law we can at least trust to the good sense and feelings of delicacy and affection of the earning member for giving the family the benefit of the acquisitions by postponing partition for a time; whereas the Bill declares that from *the very commencement* the acquisitions are the exclusive property of the earning member though remaining undivided. No scope is given for the operation of the feelings of delicacy, of moral duty or affection or the like. Under such circumstances even the sense of moral duty will become blunted in this respect, and it is highly improbable that an earning member will, out of mere gratitude, give, that is, make a gift of, a share to his coparcener in what the law expressly declares to be exclusively his own.

14. Hence the effect of the Bill would be this. Because the existing law is unable to compel a few persons who have received education to assign a share to the coparceners that assisted them with their funds, we will enact another law *practically* making all or nearly all the persons receiving such education *not to give* any portion of their earnings to their coparceners.

15. As for the argument that under the proposed law the member acquiring by means of learning will postpone partition out of certain family considerations and there will be no room for discord and mistrust, it loses much of its force when we remember that the *other members* in management of the family property would then be more tempted to conceal the savings, &c., and where the estate is one likely to be improved or enlarged by their exertions, such members would divide off their shares instead of spending their energy upon the whole estate and giving the benefit of the improvements and accretions to the educated brother who is earning abroad solely for himself.

In addition to these cases of partition being expedited, there might also be cases in which one coparcener will demand partition even at the very time at which a large expenditure is sought to be incurred for the education of another coparcener.

16. Coming to the different kinds of special education or science, we find that all of them do not stand on the same footing. As we have special education for the law or medicine we may also have special training for agriculture, commerce and the like. But these latter require the continued use of substantial property (in the shape of land or money) for the special training or science to bear fruit, while the professions of law and medicine require little capital. Again a member who has made mechanical engineering his special study might think of setting up a mechanic's shop as being more advantageous than seeking for service under some one else, and this business also requires capital. In these and similar instances it would be more beneficial to the persons concerned and to the country itself that the special knowledge and skill should be exercised on the property (land or capital) of the family itself than that those who have acquired such special knowledge and skill should work on the land or capital of other persons. Besides, while we are complaining of the want of sufficient capital and of the minute subdivision of lands into small holdings—holdings too small in fact to enable us to carry out any substantial improvements—it is highly necessary that the persons who have received special agricultural, commercial or mechanical education should have for the exercise of their knowledge and training, at least the *whole* of the property or capital the entire family can command, rather than that the member so educated should divide off his own share and work upon it.

17. Agricultural education, commercial education and in fact all kind of industrial education, are now recognized as being essential for the development and advancement of the country, and instances of such education are sure to become much more numerous than at present; and yet, it is such education that is placed at a considerable disadvantage by this Bill, as compared with the education for the law or the medicine. For, as already stated, those to whom the former kind of special education has been imparted have, under the present circumstances of the Hindu community, to utilize the family property for the operation of their knowledge, and whatever may

be the amount of special knowledge and skill that contribute to the acquisition, the utilization of the patrimony is enough to make the *whole acquisition* partible among the different coparceners.

18. This portion of the existing law is left entirely untouched by the present Bill, which, if passed into law, would produce an anamoly. Suppose in a joint family of two brothers, the senior studies for the medicine, while the junior receives special education in agriculture or mechanical engineering; and suppose Rs. 4,000 is spent on each of the brothers; the senior would be allowed to appropriate exclusively to himself all his earnings, while the junior who has devoted the whole of his industry, intelligence and special learning and has probably doubled in value the family lands or capital would be compelled to share the same with the senior brother.

The other alternative would be to compel the younger brother at once to divide off his share of the property or capital and work in a small and narrow scale or what is more likely, to seek for the property or capital of some one else to turn his special knowledge to account. None of these states of things is desirable; and it would therefore be better not to disturb the existing law under which *all* the brothers who have received special education *of whatever kind* at the joint expense, will share in each others earnings so long as they remain undivided.

19. Objection is taken to the existing law on the ground that when the earning member attempts to divide "the other members who expect to share in the earnings naturally thwart the attempt by offering a passive resistance more effectual than active resistance." This is true enough. But there are other cases in which similar difficulty is felt, and yet we do not think of proposing a remedy by legislation. When in a joint family a brother or an uncle having no issue or having only daughters wishes to settle property upon his wife or daughters, the other brothers or nephews often offer the same kind of passive resistance, and the brother or uncle wishing to divide to enable himself to alienate his share is driven to a suit for partition as much as the earning member aforesaid, though in the case of this uncle or brother, the other members of the family can have no claim of any kind on him.

20. The objection to the existing rule, namely, that "it intercepts the descent of the acquisitions to the personal heirs of the acquirer, that it precludes the acquirer from making a gift or will in respect of them and disables his personal creditors from pursuing the same" are not really so many different objections, but are only the different phases or aspects of the single conception that the acquisitions are not the exclusive property of the earning member while he remains a member of a joint family.

21. One important effect of this new legislation upon the community at large would, it is submitted, be to obstruct the progress of all higher education, general and special, involving any large expenditure. This must be apparent from the facts stated above in paragraphs 10 and 11. In practical life we do not find many instances in the Hindu community of any large outlay being incurred to educate a boy, because education is in itself good, or merely for the sole benefit of the boy himself. Hindu society as a whole is at present very far behind this stage. And for want of funds or other grounds the Government are endeavouring to withdraw their aid from higher education. It is desirable therefore that we do not by any fresh legislation disturb the existing state of things and take away the main inducement in regard to education. Otherwise the loss to the community would be too great. Not only would there be a much smaller number of educated men in society, but the number of persons making large or handsome earnings would be considerably reduced, and there would be but few individuals who could with their special training in agriculture, engineering, industrial arts and the like assist in the development of the country's resources, not to mention other consequences of more or less importance.

22. The chief point in favour of the Bill is the uncertainty, justly called the "distressing uncertainty," of the law in deciding the nature and character of the education imparted. The Mitakshara does not expressly refer to special education or science, but more than ordinary education is implied as the *substantial and proximate cause* of the earnings can in this respect be nothing less than special education or

science. While I fully perceive there is "distressing uncertainty" in determining the character of the education, I submit we need not necessarily adopt *the present Bill* for removing the evils of such uncertainty. It might be said that there has been uncertainty in other branches of the Hindu Law and yet we have been looking only to the decisions of the High Court and the Privy Council for the removal of the uncertainty. As an instance reference might be made to the law of adoption in regard to the questions as to who may be adopted, and whether any and what ceremony is essential to validate the adoption.

Similarly it might be argued that in the present instance it might perhaps be preferable to trust to a course of judicial decisions for settling what ought to be deemed special education or science in the existing conditions of the society rather than invoke the aid of legislation for the purpose. But here we have an important and unique feature which distinguishes the present case from all others. While the uncertainty in regard to any question of law could be removed generally by single authoritative decision, we would require *a series of such decisions* of the highest courts to settle what kind or character of education ought to be considered special and not ordinary, the question though nominally one being so varied in character and so comprehensive in its scope. But waiting for *a series of decisions* means waiting for a long number of years and allowing the country to suffer in the interim the evils ensuing from conflicting decisions of Mofussil Courts. I therefore beg leave to suggest that the aid of the Legislature may be invoked to define, as far as possible, what ought in the modern condition of society to be considered as general, ordinary or rudimentary education, and what education regarded as special, scientific or technical. The distinction between the two classes of education is in the majority of cases well marked, and in no case can it be said to be too vague to be judicially recognized. But in view of the difficulty likely to be experienced by Mofussil Judges in cases regarded as doubtful, the Legislature may declare, so far as it may be feasible, what education is to be regarded as special, scientific or technical so as to serve as the substantial and proximate cause for earning. It may declare, for instance, what classes " of legal practitioners ranging from Barrister-at law to Second-grade Pleader " are to be considered as having received special education or training.

23. A Bill framed with the above object would in no way be an attempt to *alter* the existing Hindu Law as laid down in the original text or commentaries, but would merely be *an explanation* or *amplification* of its provisions on a matter on which the law is silent. Such a measure would in the language of the Bombay High Court be " only adapting the texts to the condition of modern Hindu society."

While the Bill now under consideration removes the uncertainty by altogether ignoring or abolishing the distinction between ordinary and special education, the measure above suggested would recognize the distinction and avoid the uncertainty by *defining* the two kinds of education and including the doubtful cases in one kind or the other. Such a measure would not be open to the objections already stated in reference to the present Bill.

24. If it should, however, be thought that such a measure is not at all feasible, we must remain content till *a course of decisions* of the highest tribunals should set the question at rest.

25. Even if the present Bill should become law, there is no reason why it should be made *retrospective in effect* by affecting the acquisitions of learning made prior to the passing of the law.

26. In conclusion I beg to summarise my views as follows :—

(1) The Bill is much more than an adaptation of the Hindu Law texts and commentaries to the condition of modern Hindu society, and is really *an alteration* of the existing Hindu Law on *Vidyadhanam*, as laid down by the Smriti writers and recognized commentators and as interpreted to us by the High Courts.

(2) On general grounds, it is not desirable that the Legislature should interfere with the course of the Hindu Law in regard to private property; and even if it should be conceded that such interference is permissible when rendered absolutely necessary by exceptional circumstances, such exceptional circumstances do not now exist.

(3) Not only the existing law seems reasonable in a community governed by the law of coparcenery (paragraphs 8 and 9), but a change in the law will, under the present circumstances of the country, materially obstruct the progress of all higher education, general and special, and hinder the advancement of the society and the development of the country's resources (paragraphs 10, 11 and 21).

(4) We cannot be sure that the change proposed will secure on the whole the prevalence of good feeling and postponement of partition among coparceners to *a greater extent* than we find at present (paragraphs 12 to 15).

(5) The Bill seems to favour only certain classes of special education, namely, education for the Bar, the Medicine, Civil Service and the like, and places at a disadvantage those kinds of special education and training such as education in commerce, agriculture and the industrial arts that are essential for the development of the country (paragraphs 16 to 18).

(6) There is a great deal of uncertainty in determining the nature and character of the education imparted, and the question being too varied in its aspects and too comprehensive in its scope to be settled authoritatively by two or three Judicial decisions, it is highly desirable that the Legislature should define and declare so far as it may be feasible, what ought in the modern condition of society to be considered as *general*, *ordinary* or *rudimentary* education and what education regarded as *special*, *scientific* or *technical*. Such a measure would remove the existing evils and leave the Hindu Law as it is.

(7) And even if the present Bill should become law, it ought not to be made to affect the acquisitions made *prior* to the passing thereof (paragraph 25).

From the Honorable Sir T. MUTTUSAMI Aiyar, K.C.I.E., to the Chief Secretary to Government, dated Madras, 17th January 1893.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following remarks on the Bill introduced by the Honorable Mr. Bhashiyam Aiyangar relating to what are called in Hindu Law gains of learning or science.

The educated classes consider the proposed legislation necessary and on this point there is a concensus of opinion amongst them. Even the orthodox section of the Hindu community are not much against it since what is proposed to be effected by legislation may now be secured by partition. Although a coparcener may not share with his co-heirs what he earns by his learning, yet he may often assist them in several other ways from family affection so long as he continues in the joint family. Whilst, therefore, it is their interest that he should continue in the co-parcenery family, the present state of the law tends to force partition on him unless he is prepared to share with others the fruits of his learning. It is a rule of general jurisprudence that what one earns by his own unaided exertion is his exclusive property and the Hindu Law recognizes it except, as will presently appear, so far as it relates to gains of learning. Apart from these considerations it is to be observed that the law relating to gains of learning is a branch of the law of self-acquired property in a joint Hindu family. Whenever some property other than gains of learning is claimed to be self-acquired in a partition suit, we inquire whether the acquisition was made by the claimant by his own exertion or with his own earnings or whether his co-parceners assisted him or joint property was used in making the acquisition. In the one case we pronounce the property in dispute to be self-acquired and not partible and in the other we hold that it is joint and partible. But we do not inquire whether the acquirer or his wife was maintained by the joint family or from joint property when he made the acquisition nor do we treat any aid rendered to the acquirer material unless it is directly instrumental in acquiring the property and becomes thereby a joint cause of the acquisition. The proposed legislation, therefore, only places gains of learning on the same footing with other descriptions of self-acquired property.

I shall now proceed to consider on what foundation the Hindu Law rests so far as it relates to the conditions mentioned in section 3 of the Bill subject to which gains

of learning are now treated as separate property and whether it is expedient to repeal those conditions. The Smrities, the commentaries and the decisions bearing on the subject are cited by the Honorable Mr. Bashyam Aiyangar in his speech in the Legislative Council and it is hardly necessary for me to recapitulate except for the purpose of indicating the conventional family notions embodied in them.

There are three classes of Smrities which bear on the subject and the first of them shows how the notion of self-acquired property attained development under Hindu Law. The modern joint Hindu family was once patriarchal in its type and the prevalent family notion was that the head of the family was the absolute owner of all that belonged to it, and that what each member of the family acquired by his own exertion belonged to its representative. In a Smriti attributed to Menu, the wife, the son and the slave are said to have in general no wealth of their own and what they acquire is declared to belong to the person to whom they belong. At this period no notion of self-acquired property was possible.

The patriarchal family, however, since ceased and the introduction of the law of partition changed it into the joint family. The first indulgence shown to the person who acquired property by his own exertion in such family is indicated by the text of Vasishta which says. "If one of the brothers acquires property by his own exertion, let him have a double share." The next change of the family notion is indicated by a Smriti attributed to Viyasa who states: "That brothers participate in that wealth which one of them gains by valour or the like, using common property such as a vehicle or weapon." At this time the family notion was that what a co-parcener acquired by valour was his exclusive property, but that the slightest assistance received from family property was sufficient to make it partible.

In consequence of the predilection felt in archaic times for the joint family, family property was guarded with extreme jealousy and it was even seriously discussed whether being nursed by a common mother and using a family plough rope was not sufficient aid from a family source. Another class of Smrities indicates a further stage of development. In the first paragraph of his text, Menu places property acquired by learning in the same category in which he places a gift from a friend and a present received on marriage, and in the second paragraph, he lays down the general principle in these terms: "What one brother may acquire by his labour without using the patrimony, that is an acquisition by his own effort and he shall not share it with his brothers except by his own choice". Yangyavalkya on whose Smriti the Mitakshara, which is the leading commentary in this Presidency, is based, expresses the same opinion and observes after referring to family property, "whatever else is acquired *apart from and without detriment to the paternal estate* as a friendly or nuptial present does not belong to the co-heirs. Nor shall he give up to his co-parceners what has been gained by science." It has been held upon the authority of these Smrities that the use of patrimony contemplated was a substantial use and one which was directly instrumental in the acquisition of the property. This is the furthest development which the law of self-acquired property has attained in a joint family and the Bill does not go beyond it.

There is another class of Smrities which it is necessary to mention in relation to gains of learning, viz., the texts of Catyayana, Narada, Brihaspati and Gautama. The text of Catyayana is full and it is sufficient to refer to it alone. Catyayana lays down three principles and first excludes what is gained by learning imparted in the family or acquired whilst being maintained by the family from the definition of gains of learning. The second principle is that what is gained by superior learning or superior skill or merit is separate property. The third principle is that a learned co-parcener need not share his gains by learning with his *unlearned* co-heirs. It is in this Smriti that the receipt of maintenance or instruction from the family is treated as making gains of learning partible property, but Catyayana limits that rule to ordinary gains by declaring that wealth gained by superior learning, merit or skill, is exclusive property and by making even the ordinary gains partible with other *learned* co-heirs only. From the instances he gives, he evidently refers to what was then considered among Brahmins to be special earnings of learning. Reading the Smriti in the light of usage which prevailed at that time, the text is clear and intelligible. Professions

As regards the first objection, I beg to observe that, where the moral sense of responsibility is absent or weak, fear of law is not likely to create or strengthen it. At present, when the senior member of an undivided family is unwilling to educate or support the juniors, the treatment which he accords to them compels them to leave his home and they have to beg or borrow their livelihood.

Prospect of relief from law is a bait which, not infrequently, proves the ruin of those who are led by it into reckless borrowing and wasting of the precious years of youth. A compulsory law of division of property, which one regards as one's own by right of acquisition, must have a bad moral effect both on him from whom property is taken and on him to whom it is given. It checks the natural flow of brotherly affection and sympathy. The law, as at present administered, its uncertainties apart, by which the gains of learning are treated as partible like the ancestral and common property of an undivided family, is not at all conducive to domestic economy and peace.

As regards the second objection stated above, I believe that paternal interest and affection will survive all changes of law. Sensible fathers will continue to take in the education of their sons the same interest which they show now, be the law of partition what it may.

On these grounds I have great pleasure in expressing my cordial approval of the Bill brought forward by the Honorable V. Bhashyam Aiyangar.

I very much regret the delay in submitting this letter. The time gained has, however, enabled me to gauge local public opinion as best as I may.

From Rao Bahadur A. SABAPATHY MUDALIAR, Bellary, to the Assistant Secretary to Government, Legislative Department, dated Madras, 14th December 1892.

I beg to acknowledge receipt of your letter of the 31st August 1892 with enclosures *re* the "Gains of Learning" Bill. I regret I was not able to reply to it earlier owing to my absence from the town for some time and pressure of business.

In the first place, the Bill aims to declare all gains of learning by a Hindu to be his separate property, whether such learning has been imparted to him by any member of the family, or at the expense of the joint funds of such family. I think that when a family undertakes to educate a member, it does so with the hope of enjoying the reward of such education jointly with the acquirer; and the family entertains joyful hopes that the member who is so educated will in his future career better the circumstances of the family. And the member who receives education at the expense of family funds is in duty bound to be grateful to those who were the means of his obtaining knowledge. The cost of educating a member of a family is considered an investment, which should in its turn repay the capital with interest. It is not only money that has been spent in having the member educated, but there is also a deal of care and attention, whose value is inestimable. And there is also the great risk whether those interested members of the family who gave him the education would live long enough to reap the fruit.

Thus it will be seen that it is a most sacred duty on the part of the member receiving education that he should share his gains of learning with the other members of the family, as wisely provided for in the Hindu Law. Both as a matter of strict duty and benevolent charity, of which spirit the Hindu mind is so full, the gains of learning of one member has to be shared by all the other members.

The Bill now under consideration engenders selfishness and discards the tender filial and fraternal ties, and estranges such a member from all the rest of the family.

For the above reasons, I do not see the necessity for a Bill of the sort now proposed, and I do not therefore agree with the provisions of the draft Bill. It aims a blow at certain wise provisions of the Hindu Law and acknowledged by the Hindu community to be a blessing to all concerned.

which is highly distasteful to every Hindu, as it involves a severance from the rest of his family and renders him for all practical purposes, including those of religious ceremonial, an absolute stranger to them.

3. The popular opinion too, except in some remote rural tracts where the people still continue to live in the old primitive ways and are unaffected by the great inequalities of position and property caused by Western education, is, I believe, not against the spirit of the provisions of the Bill. For, as a matter of fact, at the present day earning members of families, though supporting those dependent upon them are willingly allowed to keep the great bulk of their gains as their own property and suits for partition of such gains are rare. The proposed legislation, therefore, is not, to my mind, so opposed to the feelings of the Hindu community as it may at first sight appear.

4. Under any circumstances it seems desirable that some action should be taken for the protection of the earning members who, in the present uncertainty of the law, as contained in the somewhat conflicting decisions of the High Courts on the subject, or in a state of doubt and indecision.

5. I am thus in favour of the proposed legislation, because—

(1) it will at once remove the existing uncertainty of the law on the subject;
(2) it is only just that the fruits of a man's labour should be declared to be his own; and
(3) it is expedient that such a declaration should be made as it will prove an incentive to further exertion to attaining to success in life.

From M.R.Ry. S. SESHAYYA, First Lecturer, Government College, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated 12th December 1892.

In reply to your letter of the 31st August last, I beg to submit the following remarks :—

I concur with the Honorable V. Bhashyam Aiyangar in nearly all that he has said in his Statement of Objects and Reasons.

Admittedly the law of partition of the gains of learning is at present uncertain and is a source of most expensive and demoralizing litigation with Hindu families. The legislation now proposed will set the law at rest, and will, I am persuaded, have a salutary economical and moral effect on the Hindu community at large by compelling its members to greater self-reliance, thrift and industry than they are willing to practice at present. *Manu*, the ancient law-giver, observes that, by the division of one family into many families, *dharma* would multiply. The observation is true not only in the limited sense in which the word is interpreted, but is more true in the extended sense of the term including all a man's duties.

I do not believe that the proposed legislation will at all be repugnant to the feelings of the more thoughtful section of the Hindu community. Nearly all with whom I have discussed the question, including among the number several non-English-educated gentlemen, have expressed their approval of the Bill. The only objections that can be urged against it are :—

1*st*.—That a definite provision of law, which secures to members of undivided families the exclusive enjoyment of their gains of learning, may tend to weaken in those who are able to earn the sense of responsibility for giving, by education, or otherwise, a start in life to those of their nearest kinsmen—their brothers and cousins—who may be in need of it.

2*nd*.—That the head of a family may not, when the Bill should become law, take the same interest that he does now in the education of his sons, giving to the more gifted of them a high education at a great cost in the hope that the earnings of the more capable will be used for the support of all.

From M.R.Ry. NYAPATHY SUBBARAU, Pantulu Garu, B.A., B.L., High Court Vakil, Rajahmundry, to the Chief Secretary to Government, dated Rajahmundry, 15th December 1892.

In reply to G.O., No. 47, dated 31st August 1892, I beg to state that I am not in favour of the introduction of the "Bill to declare the gains of learning by a Hindu to be his separate property." As I have no leisure at present, I propose to submit a full memorandum on the subject with my reasons by the 7th January 1893.

From M.R.Ry. R. RAMASUBBAYYAR, Madras, to the Secretary to Government, Legislative Department, dated Mylapore, 2nd January 1893 :—

In reply to your letter enclosing a "Bill to declare gains of learning by a Hindu to be his separate property," I have the honour to submit the following :—

I quite approve of the Bill and the necessity for passing it into law. One aspect of the question is that it is likely to cause harm by preventing the head of a family from investing family property on the intelligence of its more gifted members. This can seldom be so when the head is the father whose natural love and affection would scarcely require to be supplemented by any mere prospect of sharing in the gains of his sons. Brothers, uncles, &c., would, no doubt, stand on a different footing. But such cases are generally few and the advantages flowing from the present state of the law are far outweighed by the inconvenience and unpleasantness which take the shape of costly litigation and family quarrels and which arise from not having a settled rule as to who shall be entitled to the gains of one's own exertions. The beneficial result of the Bill would be most felt in deciding the relations between father and son. As the law at present stands, there are few fathers who have raised their material condition by their own exertions that can afford to tell their sons, without their being dragged into the most costly and annoying litigation, "you shall not have any of my acquisitions, as long as you are not prepared to conduct yourselves properly." Such a state of things must make the sons lazy and unself-reliant if not worse in many other ways. I think the time is come when every effort should be made to free the individual from the trammels of the family system.

From Rai Bahadur P. RANGANADA MUDALIAR, to the Chief Secretary to Government, dated Wexford House, Chetput, 9th January 1893.

In reply to your letter No. 47, dated 31st August 1892, from the Legislative Department, requiring me to state briefly my views on "the Gains of Learning Bill," I have the honour to submit that I strongly approve of its main provisions. I consider it a matter of grave urgency that steps should be taken for reducing to a considerable extent the harassing and costly litigation in connection with self-acquired property. There is room for difference of opinion in regard to some kinds of self-acquired property, but as regards the property that a person acquires by means of his learning, there is among the educated classes of the community but one opinion, and that opinion is strongly in favour of declaring such property to be his own and not liable to be shared in by other members of the family. The distinction drawn between scientific education and general education, and that between ordinary gains of learning and extraordinary gains of learning, are so indefinite that they afford considerable scope for legal disputation. In the existing state of things among the Hindus, I think it right and desirable that every Hindu who acquires property by means of his learning should possess exclusive right to such property, should be entitled to make gifts out of it while living or to devise it as he chooses, and should have the satisfaction and the certainty that in case of his dying intestate, such property would descend to his personal heirs and not become the subject of expensive litigation.

The present uncertain state of the law has undoubtedly exerted a most demoralizing influence. It has been urged that the evil may be obviated by the person likely to make large acquisitions by means of learning going in for a division of property.

Further it must be remarked that the Hindu Law does not in the least ignore the right of any individual member to the *exclusive* enjoyment of his acquisitions, where they are made without the aid of the joint funds. The rule of law in this respect may well be stated in the words of the judgment of the Madras High Court passed nearly thirty years ago in what may be called the leading case on the point (Chalkonda Alasani *versus* Chalkonda Ratnachellam, Madras High Court Reports, II, 56), thus:—"The gains of science are divisible when such science has been imparted at the family expense, and acquired while receiving a family maintenance." This ruling seems to be the result of a correct interpretation of the laws extant on the subject, and appears to be quite just and proper. Mr. Justice Holloway in his judgment in the said case observes that "there seems nothing unreasonable in this provision;" and Sir Richard Couch, the Chief Justice of Bombay, following the said ruling of the Madras High Court, says: "Nor, having regard to the usages of the native society, do we think it is bad law." (Bombay High Court Reports, VI, Appellate, Civil, I).

Nevertheless it is quite possible that this rule may entail hardship in some cases; for, as observed by Sir T. Strange in his work on the Hindu Law, "the effect of the use of the joint stock in rendering separate acquisitions in general, common, is attended sometimes with injustice, where in cases of small patrimony large fortunes are made by the unaided exertions of enterprising parceners, of which benefit may eventually be shared by drones who have in no degree conduced to their accumulation. Nor, to obviate this, is there any resource, where timely separation has been omitted." And Sir R. Couch, in the Bombay case above noticed, says, "there may be hard cases, and the remedy for such is in the hands of the parties themselves, viz., to divide."

It is broadly hinted in the Statement of Objects and Reasons of the Bill under consideration that the rule of the Hindu Law above noticed may be disregarded, as it is based, not so much upon the original Smriti texts, as upon the authority of the commentators. But this, in my opinion, is not allowable; firstly, because it is not for us at the present day to impugn as unfaithful the construction put upon the law by those commentators whose authority has from time immemorial been recognised by the Southern Jurists without a word of demur; and, secondly, because, although the Smriti texts are of paramount authority, yet usage has interfered with the precepts of the Smritis, and time has rendered their language obscure, so much so that commentaries are now looked to as the true expositions of the law. "It is the opinion of the Southern Jurists," says Sir T. Strange on the authority of the great Sage Vrihaspati, "that text-books are not of themselves authority; and that the only authority in Hindu Law is to be sought in the later times in the conclusions and decisions of the authors of the several digests and commentaries, according to the schools to which they respectively belong." Here it is remarkable that the famous Mitakshara which avowedly gives the law to the Hindus in Southern India, is nothing but a commentary of Vignana Yogi upon the original Smriti text of Sage Yagnavalkya; and the doctrine now under consideration is in accordance with that work.

From the above it will be seen that the rule under consideration is based upon fundamental principles of the Hindu Law, upon which the status of the Hindu society is established and maintained; and which the Legislature has declared it to be its policy to preserve intact; that such rule is quite fair and equitable; and that in case the practical working of the rule is likely to prove prejudicial to any individual member, the law has already provided a remedy for him, which he may exercise without infringing the general rule of law.

In respect to the law thus established, the legislative interference can hardly be justifiable, unless it is shown that there prevails an uncertainty in the practical working of that law, which cannot be removed but by the Legislature. The Bill under consideration is intended to apply to the Madras Presidency alone; and in this Presidency there is no uncertainty, but a perfect uniformity is observable in the course of the judicial decisions in favour of the doctrine now prevailing here. The leading case on the point is that of Chalkonda Alasani *versus* Chalkonda Ratnachellam, above referred to, which was passed by the Madras High Court so far back as 1864 (II, Madras High Court Reports, 56). This was followed in the case of Gungadharadu *versus* Narasamma decided by the Madras High Court in 1872 (Madras High Court Reports, VII, 47). And up to the present time these decisions have not been superseded or over-ruled.

It is said that in the said leading case there was a difference of opinion between the District Judge and the High Court. But a careful perusal of their decisions will show that they recognised the principle of law both alike, but only differed as to matters of fact as to what constituted the gains of science, as clearly observed by Mr. Justice Holloway in the same case. And in the second case above mentioned, Mr. Justice Kindersley remarked, "it is impossible to read the authorities without concluding that the question must be upon the facts of each case how far the common family means were instrumental in enabling the professional man to earn the property." I do not think that the Legislature will consider it necessary to interfere in such cases, and lay down hard-and-fast rules in respect of a doctrine, whose practical application is variable according to the facts peculiar to each case.

I am aware that the course of judicial decisions is different in Madras from that in Bengal and partly in Bombay in this respect; but this cannot afford the slightest justification for altering the law in Madras. For the Hindu Law prevailing in Bengal varies from that in force in Madras, not only in this respect, but in numerous other and more important matters also. Thus, in Bengal, sons have not ownership in their father's property, ancestral or other, until after his demise, whereas in Madras sons can enforce partition upon their father during his lifetime. The father takes his deceased son's estate before the mother in Bengal, while the mother takes first in Madras. In Bengal the property of a man dying without male issue goes to his widow, whether he was or was not divided from his brothers; but in Madras the widow can only succeed in a divided family. This great divergence in the law is due to the corresponding divergence in the manners and customs of the people inhabiting the two Provinces, and to the different schools of thought followed by them. In such state of things, the Legislature would no doubt consider it not quite safe or expedient to attempt to alter the law in Madras to suit it to the views prevailing in Bengal in respect of the doctrine now in consideration or in any other respects.

In the case of Pauliem *versus* Pauliem which came before the Privy Council some years ago (Indian Law Reports, I, Madras Series, 252) a question was raised with reference to the doctrine under consideration, but was not decided. Their Lordships, however, passed an *obiter dictum* not quite favorable to the rule laid down in the Madras cases, and concluded by remarking that "it may hereafter become necessary for this Board to consider this doctrine." So then there is a prospect of the subject being conclusively settled by the Highest Tribunal when a concrete case may go before it in due course; and in the meantime it is also quite possible that the High Court in Madras may avail themselves of the dictum thrown out by the Privy Council, and alter the course of its decisions. Already we see some signs of a change in this direction; for in Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, 330), the Madras High Court has shown a decided leaning towards the dictum of the Privy Council. It is only in this way that certain knotty points in the Hindu Law have been gradually set at rest,—as for example, the question whether the giving of the eldest or the only son in adoption was valid or not; whether the performance of the "homam" sacrifice was essential to a valid adoption, and so on. No interference of the Legislature was ever considered necessary for settling any and every arguable point in the Hindu Law or any other law.

In conclusion, I beg to point out that at present there is no question of laying down a new law. The question here is purely one of the interpretation of the existing law, and of its adaptation and application to the facts peculiar to each case, neither of which is within the cognizance of the Legislature.

From K. SHESHADRI IYER, Esq., Diwan of Mysore, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

In reply to your letter No. 47, dated the 31st August 1892, I beg to submit my views on the Bill introduced by the Honorable V. Bhashyam Iyengar into the Madras Legislative Council for declaring the gains of learning by a Hindu to be his separate property.

2. The ideas of joint family and the moral obligation of an earning member to support the unearning members are deeply rooted in the Hindu mind, and, as a matter of fact, the majority of earning Hindus of the present day actually support, often at the sacrifice of their own personal convenience, the uneducated and unearning members of their families and even distant relations having no legal claim on them. The earning member, however, not unnaturally feels it hard and unjust that the fruits of his own hard labour and professional skill should be claimed *as a matter of right* by persons who are far inferior to him in intelligence and industry and who are either unable or unwilling to contribute in any way towards the acquisition of the wealth in which they claim to participate. He would, in most cases, be found most willing and ready to assist his poor relations if the matter were left to his own good sense, natural affection and desire to win public esteem. On the other hand, to the man who is dead to the dictates of natural affection and the duties enjoined by the opinion of society, there is already, under the existing system, a ready means of escape, as he has only to take the precaution of having a division of family property effected when there appears a prospect of his attaining to wealth. The real sufferer under the existing system, therefore, is the educated earning man having a respect for the opinion of society and natural affection for his brothers and more distant kindred, who hesitates to resort to a division of family property, an extreme measure

check individual effort and serve as a clog on the progress of the country. That these limitations should control the disposition of property acquired by a member of a family by his own exertions, natural gifts and opportunities well used, simply because he was educated at the family expense is certainly undesirable.

As regards persons governed by Marumakatayam law the evil is still greater, since under that law partition is not allowed. Even as regards self-acquisition, the power of disposition among these people is very much limited, being confined to alienations *inter vivos*, and though this measure does not confer any new rights of disposition over their self-acquired property, yet it in a measure promotes a greater circulation of property by taking self-acquisitions out of the category of Tarawad property.

It seems to me therefore that under the existing state of circumstances there is a real ground of complaint, and the passing of some such measure as the one under discussion will be a step in the right direction.

The cautious and carefully thought-out measure drawn up by Mr. V. Bhashyam Iyengar meets the difficulty without going too far. It does not deal with cases where joint family funds are the immediate cause of the acquisition nor to cases where self-acquisition is constituted joint property by the acquirer himself. It only extends to property acquired by special education the rule which may be taken to apply to property acquired by general education.

The objection that is often raised against the Bill is that it will deter the senior members of a family from imparting proper education to their juniors by taking away the prospective reward of sharing in the earnings of the latter. This, in my opinion, loses sight of the law as it is which allows partition at any time, and it also underrates the strength of family tie and affection that holds Hindu families together.

I believe that the present Bill, if it becomes law, will pave the way for the codification of other branches of Hindu Law in conformity with modern ideas and tendencies of Hindu society, and dispel the prevailing idea that places Hindu Law beyond the field of legislative control.

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From Raja G. N. GAJPUTEE RAO, Vizagapatam, to the Secretary to Government, Legislative Department, dated Vizagapatam, 26th November 1892.

I beg to acknowledge the receipt of your letter, dated 31st August last, No. 47, forwarding copy of a Bill, with Statement of Objects and Reasons, to declare the gains of learning by a Hindu to be his separate property, which the Honorable V. Bhashyam Iyengar has introduced into the local Legislative Council, and asking for my views on the same.

It appears that the Calcutta and Bombay High Courts have ruled that the gains of ordinary education are impartible, while those of higher or special education are divisible in case the acquirer of wealth has received his education at family expense. From the remarks made by the Madras High Court in their judgment in the case of Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, page 320) in which the opinion of the Privy Council in the case of Paulium *versus* Paulium was quoted, it is probable that they will adopt the law of Bengal and Bombay in this respect in the Madras Presidency also.

The Bill, however, dispenses with all distinctions in the nature of education or training and declares the gains of all learning or training, whether general or special, to be the separate property of the person who may acquire the wealth. In many cases higher or special education is given at family expense for the express purpose of gain and for the benefit of the family, and often shared by the person who expends on one's education in the first instance and is a source of support to the family. Even the Dayabhaga, which is more liberal than other Hindu Law books in this respect, charge the wealth of a co-parcener with partibility when it may be acquired by science imparted at family expense purposely intended for the same.

I am aware that the course of judicial decisions is different in Madras from that in Bengal and partly in Bombay in this respect; but this cannot afford the slightest justification for altering the law in Madras. For the Hindu Law prevailing in Bengal varies from that in force in Madras, not only in this respect, but in numerous other and more important matters also. Thus, in Bengal, sons have not ownership in their father's property, ancestral or other, until after his demise, whereas in Madras sons can enforce partition upon their father during his lifetime. The father takes his deceased son's estate before the mother in Bengal, while the mother takes first in Madras. In Bengal the property of a man dying without male issue goes to his widow, whether he was or was not divided from his brothers; but in Madras the widow can only succeed in a divided family. This great divergence in the law is due to the corresponding divergence in the manners and customs of the people inhabiting the two Provinces, and to the different schools of thought followed by them. In such state of things, the Legislature would no doubt consider it not quite safe or expedient to attempt to alter the law in Madras to suit it to the views prevailing in Bengal in respect of the doctrine now in consideration or in any other respects.

In the case of Pauliem *versus* Pauliem which came before the Privy Council some years ago (Indian Law Reports, I, Madras Series, 252) a question was raised with reference to the doctrine under consideration, but was not decided. Their Lordships, however, passed an *obiter dictum* not quite favorable to the rule laid down in the Madras cases, and concluded by remarking that "it may hereafter become necessary for this Board to consider this doctrine." So then there is a prospect of the subject being conclusively settled by the Highest Tribunal when a concrete case may go before it in due course; and in the meantime it is also quite possible that the High Court in Madras may avail themselves of the dictum thrown out by the Privy Council, and alter the course of its decisions Already we see some signs of a change in this direction; for in Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, 330), the Madras High Court has shown a decided leaning towards the dictum of the Privy Council. It is only in this way that certain knotty points in the Hindu Law have been gradually set at rest,—as for example, the question whether the giving of the eldest or the only son in adoption was valid or not; whether the performance of the "homam" sacrifice was essential to a valid adoption, and so on. No interference of the Legislature was ever considered necessary for settling any and every arguable point in the Hindu Law or any other law.

In conclusion, I beg to point out that at present there is no question of laying down a new law. The question here is purely one of the interpretation of the existing law, and of its adaptation and application to the facts peculiar to each case, neither of which is within the cognizance of the Legislature.

From K. SHESHADRI IYER, Esq., Diwan of Mysore, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

In reply to your letter No. 47, dated the 31st August 1892, I beg to submit my views on the Bill introduced by the Honorable V. Bhashyam Iyengar into the Madras Legislative Council for declaring the gains of learning by a Hindu to be his separate property.

2. The ideas of joint family and the moral obligation of an earning member to support the unearning members are deeply rooted in the Hindu mind, and, as a matter of fact, the majority of earning Hindus of the present day actually support, often at the sacrifice of their own personal convenience, the uneducated and unearning members of their families and even distant relations having no legal claim on them. The earning member, however, not unnaturally feels it hard and unjust that the fruits of his own hard labour and professional skill should be claimed *as a matter of right* by persons who are far inferior to him in intelligence and industry and who are either unable or unwilling to contribute in any way towards the acquisition of the wealth in which they claim to participate. He would, in most cases, be found most willing and ready to assist his poor relations if the matter were left to his own good sense, natural affection and desire to win public esteem. On the other hand, to the man who is dead to the dictates of natural affection and the duties enjoined by the opinion of society, there is already, under the existing system, a ready means of escape, as he has only to take the precaution of having a division of family property effected when there appears a prospect of his attaining to wealth. The real sufferer under the existing system, therefore, is the educated earning man having a respect for the opinion of society and natural affection for his brothers and more distant kindred, who hesitates to resort to a division of family property, an extreme measure

In my humble opinion I think that the new measure may be confined to the limits now defined by the Indian Courts, that is to say, that the gains of elementary education will be impartible and those of higher or special education will be divisible among the co-parceners if the family stock has been expended for the purpose of education and not otherwise.

From M.R.Ry. A. VENKATARAMANA POI, Avargal, Subordinate Judge, Vizagapatam, to the Assistant Secretary to Government, Legislative Department, dated Vizagapatnam, 28th November 1892.

As directed in your circular No. 47, dated 31st August last, I beg to submit herewith a paper containing my remarks on the "Hindu Gains of Learning Bill."

ENCLOSURE.

REMARKS on the "Hindu Gains of Learning Bill."

The Bill purposes practically to abolish the Hindu Law rule regarding the "Vidyadhanam" of members of undivided families and to declare that all such gains are impartible.

2. Assuming that it is either desirable or necessary to resort to legislation for the purpose of removing the uncertainty that undoubtedly exists as to what construction will be put upon the Hindu Law texts on the subject by the final Courts of Appeal, it is, in my humble opinion, inexpedient to declare that in no case shall that "Vidyadhanam" be partible. It is sufficient to adopt the more mediate view, in favour of which the Privy Council have expressed the bearing of the opinion in Pauliem *versus* Pauliem (Indian Law Reports, I, Madras, 252), viz., that the ordinary gains of science are impartible. "What is ordinary education?" is a question to which no general answer can be given. It must be answered with reference to the circumstances of each particular case. No statutory enactment can provide general rules which will be found applicable to the varying circumstances of Hindu families, but the difficulty, or even impossibility, of framing such rules affords, in my humble opinion, no justification for sweeping away the Hindu Law rule on the subject.

3. Next as to the necessity for the proposed legislation. In the case of Statute law, the Legislature does interfere to correct the evil of conflicting or glaringly incorrect judicial interpretations thereof by amending the Acts and declaring their real intention, but the Government has always been very reluctant to resort to legislation in matters relating to native laws and usages. It is only where the evil is of great magnitude that the Government undertakes to provide a remedy by legislation. In my humble opinion the evil now brought to notice is really not so great as to justify legislative interference with the Hindu law on the subject.

4. As pointed out in the "Statement of Objects and Reasons" itself there are other rules of Hindu Law which are equally, if not more, injurious in their effects, *e.g.*, the rule which incapacitates a member of an undivided family to devise or to make a gift *inter vivos* of the whole or any part of his interest or share in the joint family property, and intercepts its descent to his personal heirs except his sons. The fact is, the average Hindu does not at all consider this result to be an evil. The very fact that in the case of "Vidyadhanam" "feelings of delicacy" deter many persons from seeking partition indicates that Hindu society in general considers it an act of selfishness on the part of the "man of learning" to attempt to exclude the rest of his family from its benefit.

5. The relief provided by the Bill is confined to the comparatively limited, and, under the influence of modern life, dwindling class of persons, whose "feelings of delicacy may postpone partition;" for, in the case of others, partition can put an end to "the uneasy feeling" as to whether their "Vidyadhanam" will be held partible or not.

6. No department of human concerns is free from uncertainty. In the Hindu society itself there are many points connected with their law of inheritance and property which are not yet set at rest by judicial decision. This is a necessary evil, and legislature cannot usefully interfere to abolish existing rules because they may produce hardship in particular cases.

7. Nor is the proposed law without its disadvantages. It is well known that many families with limited means manage to spend the best portion of their substance on the present-day education of one or more of their boys in the full expectation that his or their earnings will benefit the family. The Bill holds out a direct premium to heads of families to abstain from incurring expenditure on the proper education of the junior members. Where the head of the family is an uncle or other remote relation of the school-going members, their education will often receive but scant attention from the former.

From M.R.Ry. M. R. RAMAKRISHNA AIYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Vannarpet, 17th December 1892.

With reference to your letter No. 47, dated 31st August 1892, and reminders, dated 17th November and 5th December 1892, I have the honour to state that, owing to pressure of professional business in this part of the year, I have not been able to submit my reply as early as I should wish.

I shall send in my reply within ten days from this date.

From Diwan Bahadur P. SREENEVAS RAO, Avargal, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

I have the honour to submit my remarks on the "Hindu Gains of Science Bill" as directed in your letter of the 31st August last.

ENCLOSURE.

REMARKS of P. SREENEVAS ROW (Madras City Civil Judge) on the "Hindu Gains of Science Bill."

I am not in favour of this Bill. The Legislature has placed itself under the obligation of preserving the benefit of the Hindu Law to the Hindus in all matters concerning religion, caste, marriage, succession and inheritance. This policy was declared in the 21st year of the reign of King George III; and the Statute of 21 George III, Cap. 70, passed in 1791, ordained in section 17 that, "in order that due regard may be had to the civil and religious usages of the natives (of India), it has been enacted that the rights and authorities of fathers of families and masters of families, according as the same may be exercised by the Gentoo (Hindu) or Muhammadan law, shall be preserved to them within their families respectively; nor shall the same be violated or interrupted by the proceedings of the said Courts." This policy has been emphatically reiterated in all subsequent enactments and Letters Patent relating to India; as well as in Regulation III of 1793 of the Bengal Code, and in Regulation III of 1802 of the Madras Code, which latter provided (section XVI) that "in suits regarding succession, inheritance, marriage, caste; and all religious usages and institutions, the Muhammadan Law with respect to Muhammadans, and the Hindu Law with respect to Hindus, are to be considered as the general rules by which the Judges are to form their decisions." This is the law at the present day as declared in numerous subsequent enactments.

The law thus preserved to the Hindus being mainly founded upon religious principles peculiar to their sect, and the propounders of the law being influenced more by spiritual considerations than secular ones, this law differs from other laws in several important particulars. So that, unlike the laws of other countries, where ownership is generally single, independent and unrestricted, the rule in the Hindu Law is joint ownership; and the judicial authorities have invariably held that joint ownership is to be presumed in every case until the contrary is proved. Where such co-partnership has continued and the joint property been instrumental, in however small a degree, in the acquisition of the property, a right to the benefit of each other's labours is quite incidental; the fruit of the labours of all the members of the family goes to the common stock; and if one of them is possessed of any aptitude for any particular kind of labour, his skill is exercised for common benefit. And for all this, he is in return rewarded by an interchange of similar good offices on the part of the other members; such as the improvement of the property by various means; the increased comfort of the family-home; the services rendered to aged parents and other elderly people in the family whom all the members are equally bound to protect; and, lastly, the spiritual benefit which some members endeavour to secure for the common welfare, while other members are engaged in secular affairs. And he is further compensated more substantially by other means also; thus, for instance, while the law places a member under the obligation by virtue of co-partnership to allow his father and brother to participate in his acquisitions, it confers upon him the right of participating in the property, which he never acquired, and which, according to other laws, would be considered to be the exclusive property of the father alone; an inchoate right originating in birth, and enforceable as against the father, even during his life-time.

Thus it will be seen that the Hindu Law is not arbitrary; but is based on principles of equality as to rights and obligations.

Further it must be remarked that the Hindu Law does not in the least ignore the right of any individual member to the *exclusive* enjoyment of his acquisitions, where they are made without the aid of the joint funds. The rule of law in this respect may well be stated in the words of the judgment of the Madras High Court passed nearly thirty years ago in what may be called the leading case on the point (Chalkonda Alasani *versus* Chalkonda Ratnachellam, Madras High Court Reports, II, 56), thus:—"The gains of science are divisible when such science has been imparted at the family expense, and acquired while receiving a family maintenance." This ruling seems to be the result of a correct interpretation of the laws extant on the subject, and appears to be quite just and proper. Mr. Justice Holloway in his judgment in the said case observes that "there seems nothing unreasonable in this provision;" and Sir Richard Couch, the Chief Justice of Bombay, following the said ruling of the Madras High Court, says: "Nor, having regard to the usages of the native society, do we think it is bad law." (Bombay High Court Reports, VI, Appellate, Civil, I).

Nevertheless it is quite possible that this rule may entail hardship in some cases; for, as observed by Sir T. Strange in his work on the Hindu Law, "the effect of the use of the joint stock in rendering separate acquisitions in general, common, is attended sometimes with injustice, where in cases of small patrimony large fortunes are made by the unaided exertions of enterprising parceners, of which benefit may eventually be shared by drones who have in no degree conduced to their accumulation. Nor, to obviate this, is there any resource, where timely separation has been omitted." And Sir R. Couch, in the Bombay case above noticed, says, "there may be hard cases, and the remedy for such is in the hands of the parties themselves, viz., to divide."

It is broadly hinted in the Statement of Objects and Reasons of the Bill under consideration that the rule of the Hindu Law above noticed may be disregarded, as it is based, not so much upon the original Smriti texts, as upon the authority of the commentators. But this, in my opinion, is not allowable; firstly, because it is not for us at the present day to impugn as unfaithful the construction put upon the law by those commentators whose authority has from time immemorial been recognised by the Southern Jurists without a word of demur; and, secondly, because, although the Smriti texts are of paramount authority, yet usage has interfered with the precepts of the Smritis, and time has rendered their language obscure, so much so that commentaries are now looked to as the true expositions of the law. "It is the opinion of the Southern Jurists," says Sir T. Strange on the authority of the great Sage Vrihaspati, "that text-books are not of themselves authority; and that the only authority in Hindu Law is to be sought in the later times in the conclusions and decisions of the authors of the several digests and commentaries, according to the schools to which they respectively belong." Here it is remarkable that the famous Mitakshara which avowedly gives the law to the Hindus in Southern India, is nothing but a commentary of Vignana Yogi upon the original Smriti text of Sage Yagnavalkya; and the doctrine now under consideration is in accordance with that work.

From the above it will be seen that the rule under consideration is based upon fundamental principles of the Hindu Law, upon which the status of the Hindu society is established and maintained; and which the Legislature has declared it to be its policy to preserve intact; that such rule is quite fair and equitable; and that in case the practical working of the rule is likely to prove prejudicial to any individual member, the law has already provided a remedy for him, which he may exercise without infringing the general rule of law.

In respect to the law thus established, the legislative interference can hardly be justifiable, unless it is shown that there prevails an uncertainty in the practical working of that law, which cannot be removed but by the Legislature. The Bill under consideration is intended to apply to the Madras Presidency alone; and in this Presidency there is no uncertainty, but a perfect uniformity is observable in the course of the judicial decisions in favour of the doctrine now prevailing here. The leading case on the point is that of Chalkonda Alasani *versus* Chalkonda Ratnachellam, above referred to, which was passed by the Madras High Court so far back as 1864 (II, Madras High Court Reports, 56). This was followed in the case of Gungadharadu *versus* Narasamma decided by the Madras High Court in 1872 (Madras High Court Reports, VII, 47). And up to the present time these decisions have not been superseded or over-ruled.

It is said that in the said leading case there was a difference of opinion between the District Judge and the High Court. But a careful perusal of their decisions will show that they recognised the principle of law both alike, but only differed as to matters of fact as to what constituted the gains of science, as clearly observed by Mr. Justice Holloway in the same case. And in the second case above mentioned, Mr. Justice Kindersley remarked, "it is impossible to read the authorities without concluding that the question must be upon the facts of each case how far the common family means were instrumental in enabling the professional man to earn the property." I do not think that the Legislature will consider it necessary to interfere in such cases, and lay down hard-and-fast rules in respect of a doctrine, whose practical application is variable according to the facts peculiar to each case.

Various texts are quoted in support of the main principle of the Bill. I should think that even without them the measure is desirable in the present advanced state of Hindu society. In my opinion there is no new departure from the Hindu law as is explained at length by the Honorable Member in charge of the Bill in his Statement of Objects and Reasons, and it is unnecessary to go over the same ground here, but a certain amount of obscurity having prevailed on this subject a clear piece of legislature has become an undoubted necessity.

Diwan Regent

From M.R.Ry. A. SASHIAH SASTRI, Avargal, to the Under Secretary to Government, Legislative Department, dated Pudukóta, 20th November 1892.

In acknowledging your printed demi-official of the 31st August, received on the 14th September 1892, I much regret that I have allowed such delay to occur as to necessitate your reminder, dated 17th instant.

2. The subject of the Bill drafted by the Honorable Bashyam Iyengar is a very serious and complicated one.

3. There is no question that the ambition of modern youth is to monopolise for themselves and their children all the fruits of the education which they may have received at the expense, partially or wholly, of the joint family property, or even of such acquisitions, as begging, by the personal labours of the common parents; but the further question is whether a declaration of law such as is proposed will not imperil more vital interests and the well-being and the mutual relations of the Hindu society than appear on the surface.

4. I am of opinion that a law of the kind will grate against the sense of the whole nation, will undermine to some extent the relative and hitherto unquestioned titles to, and claims of, the members of a joint family and produce a general disturbance of property and uneasiness, if not soreness of feeling. I woud rather trust the established courts of the land to decide each case as it comes up before them on its own merits as has been the course hitherto—a course which leaves a wide door for generous proposals and sensible acceptance of compromises by members of a joint family—a door which will in most cases be shut against them if there was a law to back those who are ungrateful and ungenerous to the parent stock after Fortune has singled them out for her favours.

From M.R.Ry. M. SRINIVASA RAO, Avargal, B.A., B.L., Deputy Collector, General Duty, Madura, to the Under Secretary to Government, Legislative Department, dated 21st November 1892, No. 589.

With reference to your letter No. 47, dated Ootacamund, 31st August 1892, Legislative Department, I beg to offer my views on the "Gains of Learning Bill" as follows.

2. I beg to submit that I fully endorse the views of the Honorable Member, who is the author of the Bill, expressed in the "Statement of Objects and Reasons" and to state that, in my humble opinion, it is now high time that the law on the subject should be definitely settled by means of legislative enactment. I also think that the proposed enactment to declare the property acquired substantially by means of "learning," as defined in the Bill, to be the sole and separate property of the acquirer without reserving any right to the other members of the acquirer's joint family, although they or any of them, or the family, may have wholly, in part contributed to, or aided, the acquirer in attaining the learning or education, by means of which the property is acquired, is a just and equitable settlement of the question and is one that is calculated to promote the happiness and progress of the Hindu community. As observed by the Honorable Member, in the present condition of Hindu society such an enactment is very much needed in the interests of the peace and happiness of the

Hindu families. Under the beneficent rule of the British Government which has afforded, and is still affording, many facilities for the acquisition of various kinds of education by which people could not only earn their livelihood, but also acquire a good deal of wealth, many Hindus, who are members of joint families, have acquired and are acquiring properties by means of their education in the professions of law, medicine, engineering, and by employment in the numerous other departments of the public service. The measure will therefore be welcomed by all such persons. I do not believe that there will be any considerable portion of the community, excepting a few idle members of the joint families who have not taken advantage of the facilities afforded by their parents and the Government to acquire any useful education, who will in any way be opposed to the measure. The Hindu parents of the present day, who fully appreciate, and who are fully alive to, the advantages to be gained by the modern education in various branches of knowledge, as a rule, afford equal facilities to all their sons in acquiring learning and education. As a general rule, all the sons are started on equal terms so far as education is concerned with reference to the means or the family funds required for acquiring the desired education and learning. It is only in some exceptional cases, either owing to the natural incapacity of any particular son or his own idleness or misconduct, that he lags behind the others who began with him on equal terms. There may be however cases in which family funds have been utilized to a much larger extent than the means of the family could afford in the case of any particular member, when, for instance, a member is sent to England to be educated for the bar or the Civil Service. In such cases it may be contended that it is only "fair that his gains should fall into the common stock as a recompense for the extra outlay incurred;" but I beg to submit that even in such cases the gains of the acquirer should be declared his separate property. This may be considered a little hard on the family; but there is really no reason to fear that, in such cases, the acquirer will forsake the other members of the family and enjoy all his gains himself. On the other hand, it may be hoped that the feelings of affection and cordiality between them will increase and the other members will feel proud of him and look upon as one who has done great honour to the family, and, in fact, raised it in the estimation of the people generally. It is only reasonable to suppose that in such circumstances the acquirers will reciprocate the feelings. If, on the other hand, there be feelings of antagonism, the other members trying to assert a right to share in his acquisitions, and he, on the other hand, contesting such right, there will be no happiness in the family and there will be no inducement to enterprise.

3. I am of opinion that there will be no hardship in making the enactment applicable to all acquisitions whether made before or after the commencement of the Act. The exceptions provided for in section 4 are sufficient.

4. The subject, though forming part of the Hindu law, is one entirely unconnected with any religious ceremonies or practices prescribed by any shastras or custom and concerns only the civil rights of the acquirer and the other members of the family irrespective of the performance of any religious rites or ceremonies that the legislature may without any—the least—suspicion that its action may be regarded as an interference with religious customs and practices pass the measure in the interests of the happiness of all parties concerned, unmindful of its contravening any recognized rule of Hindu law laid down in the smrities or their commentaries.

5. The existing state of the law on the subject has been so ably reviewed by the Honorable Member that it is quite unnecessary for me to say anything on the point. It is quite clear from the "Statement of Objects and Reasons" appended to the Bill by the Honorable Member that it is hopeless to search for any reasonable and clear rules of law either in the smrities or their commentaries, or in the decisions of the courts for the solution of the various difficult questions that arise in connection with this part of the Hindu law and in my humble opinion it is not necessary to appeal to any authority based on Hindu texts of law or decisions of courts to justify the measure and to bring home to the public its utility. I beg to submit that it is sufficient to show practically how highly beneficial the measure will be and how very necessary it is to have a definite legal enactment in the place of the chaos of Hindu law texts and the decisions.

6. The following are a few of the practical results of the proposed enactment:—

(1) The measure will have the most important practical result of removing "the distressing uncertainty in which this topic of Hindu Law is involved," and thus put an end to a great deal of unnecessary and sometimes "ruinous and demoralizing litigation" among the members of the same family.

(2) The acquisition of property by means of learning will be stimulated, as the acquirer will be sure of enjoying the whole fruits of his labour himself without any anxiety or uneasy feeling that the other members of the family would put forward unjust claims to deprive him of his hard earned property. This will naturally promote individual enterprise which is an important condition for the moral and material progress of a community.

(3) As a consequence of the above two results, the measure will also tend to promote peace and goodwill among the members of a joint family, who, instead of treating each other with distrust, and of entertaining inimical feelings towards each other, on account of a real or imaginary injury to their interests by the conduct of the acquirer of property in respect of such property, would regard each other with feelings of cordiality and affection and confidence when their rights are clearly defined and declared. I beg to submit that several cases of members of joint families treating each other with feelings of distrust and antagonism have come to my notice, the sole reasons for such a state of things being the uncertainty of the law.

(4) The measure would also to a great extent put to an end to those objectionable and sometimes fraudulent transactions resorted to by the acquirer of the property, especially in the case of a member of a Marumakkatayam or Aliyasantana family, with the view of protecting his acquisitions from the clutches of the other members of the family and for securing it for his own wife and children.

7. I beg to suggest the addition of the following expressions in the draft Bill, viz.:—

(1) "physical or mental" after "and training of every kind" in line 3 of 1st clause of the 2nd section; for instance the training acquired by gymnastic teachers, gymnasts, acrobats, dancers, songsters, &c.

(2) "wholly or in part" after the word "aid" in the 4th and 5th lines of clause (*a*), section 3.

(3) Although aid strictly implies only partial aid, it is better to make the expression clearer and wider by the insertion of the above expressions after it.

From M.R.Ry. M. B. SUNDERA RAO, Subordinate Judge, Ellore, to the Acting Under Secretary to Government, Legislative Department, dated Ellore, 24th November 1892, No. 540.

With reference to your letter No. 47, dated 31st August last, directing me to furnish my humble opinion on the subject of Hindu Gains of Learning Bill, I most submissively and respectfully beg to enclose herein a memorandum containing my views on the subject for being laid before His Excellency the Governor and the Members of the Council for their consideration.

ENCLOSURE.

MEMORANDUM of the Opinion of the undersigned with reference to the Hindu Gains of Learning Bill.

The speech of the Honorable V. Bhashyam Iyengar, B.A., B.L., is a complete exposition of the Hindu Law contained in various texts and commentaries as well as in the decisions of the highest Courts both in India and England.

Most of the texts referred to in the speech clearly laid down that gains of learning acquired at the expense of the members of the family or patrimony are divisible among the other members of the family. They are chiefly from the Smritis of Narada, Catyayana, Vyasa and Yajnavalkya, and also from the commentaries of Mitakshara, chapter I, paragraphs 5, 6 and 8, of Dayabhaga, chapter VI, section I, paragraphs 5, 16, 17 and 18, and also of Smruti Chendrika, chapter VII.

The old Smritis and commentaries of the highest authority above specified recognized the partibility of the gains of learning if such learning is imparted to the acquirer at the expense of the patrimony or of an undivided co-parcener; but the original texts are not uniform in defining the quality of learning. Some simply use the word "learning," while others distinguish it by calling it as "science" or "art." But I presume that such learning was meant to apply to superior education, but not mere rudimental or elementary.

The object of the Bill is doubtless praiseworthy and preventive of good many disputes which daily occur in Hindu families and conducive to the maintenance of peace and comfort in the family besides giving security to the acquirer. But at the same time it is, I apprehend, fraught with some mischievous consequences in another way and detrimental to the interests of the poor members of the family, if they should become unfortunately orphans at a season when they should be put to education and may prove a great drawback in the advancement of education in the Hindu society.

Parental exertions for educating children flow naturally from their very heart, and it is their very natural affection that prompts the parents to educate their children in the best way possible. It is equivalent to the suckling of the milk of the mother's breast. On the death of parents when the junior members fall under the protection of a uterine or step-brother or an uncle, the case would be different. If he is not allowed a share in the fruits of learning acquired at his expense, he would not care a pin if his brother or nephew is not educated whether he has patrimony or not in his hands. He may be inclined naturally to educate his own children and leave his brothers illiterate even when paternal funds are at his disposal. Instances are too numerous and can be found in our daily experience to convince us of a brother on growing old becoming an enemy to his junior brothers and trying to impoverish them by all possible means. Without an incentive of getting some gain for himself by the education of his junior brother or nephew, I am afraid, there is nothing to induce him to undergo the trouble of giving a liberal—now even ordinary—education to him. When there are paternal funds at his disposal, a suit can be filed against the managing uncle or brother by a relative or friend of the family for providing him for the maintenance and education of the nephew or brother, but not in its absence.

I should like, therefore, to provide in the Bill that when a brother or uncle or other member of the family than parents should educate another member of it at his own expense without the aid of the patrimony, he should be allowed a share out of the acquisitions made by the acquirer of learning at his expense. When he receives his education at the cost of paternal estate, the other members need not be allowed a share of his acquisitions made by the learning.

Such education must be of a superior kind imparted at the brother's or uncle's expense, but not ordinary which can be had at any pial or charity school without much expense.

The case-law on the subject supports my view on this point, while some of the Smrutis and commentaries go in the same direction. The chief cases are Krishnaji Mahadev Mahajan *versus* Moro Mahadev Mahajan reported in Indian Law Reports, XV, Bombay, page 32; and Boologam *versus* Swarnam, Indian Law Reports, 4, Madras, page 330.

(Signed) M. B. SUNDERA RAO,
Subordinate Judge.

From M.R.Ry. K. P. SANKARA MENON, Vakil, High Court, to the Under Secretary to Government, Legislative Department, dated Mylapore, 25th November 1892.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following views on the proposed Bill "to declare gains of learning by a Hindu to be his separate property." I am sorry I was not able to do this earlier owing to my ill-health.

The conflicting opinions of Smriti writers and commentators and the decisions of Courts of Justice referred to in the Statements of Objects and Reasons accompanying the Bill show clearly the present uncertain state of the law on the subject. The distinctions between general and special education and between ordinary and extra-ordinary gains of science are so fine and sometimes imaginary that they are practically unworkable, and as a necessary result a good deal of uncertainty as to their rights prevails among members of families which very often leads to untimely partition suits with all their baneful consequences.

The fetters that are put by Hindu Law on the disposition of joint family property, the rules against gift, devise, descent to personal heirs, or liability for individual debts after death though convenient and even necessary in an early state of society,

annexure thereto containing a Statement of Objects and Reasons for an expression of my views thereon, I have the honour to state that I have carefully gone over the above papers and am of opinion that the Bill, if passed into law, would undoubtedly secure to the Hindu community the advantages which the Honorable Member has so ably put forward in his Statement of Objects and Reasons.

From the very nature of the Bill it could hardly be expected that the educated portion of the Hindu community would stand in the way of this wholesome measure obtaining a permanent place in the Statute Book of the land.

From M.R.Ry. Rao Bahadur T. PATTABHIRAMA PILLAI, Avargal, Deputy Collector, General Duty, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 18th November 1892.

I gave my best attention to the provisions of the "Hindu Gains of Learning" Bill and carefully thought over the matter with reference to the authoritative decisions on the subject so tersely put in by the Honorable V. Bashyam Iyengar in the Objects and Reasons of the Bill and with reference to the present state of the Hindu society. In my humble opinion, such an enactment as the Bill contemplates seems most desirable, as it would set at rest all the conflicting opinions of the commentators of the different schools of the Hindu law and put an end to the vexatious uncertainty of law on the point which at present exists. The authorities on the Hindu law and their commentators had in view the state of society as it existed at the time of the law-makers. The percentage of educated men among the Hindus, inclusive of those who have received no more than a mere rudimentary education, must have been very low when the law as regards the gains of learning commenced to prevail among the Hindus.

If with the aid of the Press, with the solicitude and exertion of the paramount power for the education of the mass, with the earnest desire on the part of the well-to-do Hindus to give their sons the best education available, with the increasing number of affiliated colleges and high schools in the country, and with numberless elementary schools in villages, &c., the percentage of educated men among the Hindus is only $6\frac{2}{3}$ per cent. for the Madras Presidency according to the census of 1881, there can be no doubt as to the number of educated men among the Hindus having been very limited in the days of the Hindu lawgivers, and education must have been confined only to such families which could afford funds for educating the children It was, therefore, very proper in the olden times for the uneducated members of a family dividing equally the gains of learning of one who was educated from the funds of the family. Jimuta Vahana's comment that the gains of learning is one's own separate property, provided the education given him from family funds was only ordinary, shows that it is a later authority and the principle an improvement over the older authorities which made no distinction between ordinary and special education. In the present state of society, it is high time to remove the present uncertainty of the law on the point and to declare that the gains of learning among Hindus is the acquirer's own separate property. The continuance of the present uncertainty only serves to tempt the idle members of a family to live at the expense of the more talented member and to throw obstacles for the gifted member becoming divided and drive the latter to the wicked concealment of property and benami transactions. The settling of this knotty question by law would to a certain extent impart a healthy tone and raise the standard of morality among the educated and higher class of the Hindus. I do not say that there cannot be hard cases. As for instance, the parents of a poor family may part with their landed and other property for the education of the most intelligent boy in the family, relying entirely upon his gains for the future maintenance of the family, *i.e.*, of themselves and their other boys. If the boy take shelter under the new law and refuses to maintain his parents and brothers, all the members of the family will feel sorely disappointed; but such instances will be very rare and cannot be so many as to make the law a hardship to any appreciable

portion of the community. When the law is made certain, it will be simply an inducement to every one of the members of a family to work for himself and win his bread, instead of remaining lazy in hopes of participating the gains of learning of the more active member. Parents intend education to their sons as a sort of equipment to them for acquiring means of subsistence as well as for their conduct as men and members of society. It may be ordinary or rudimentary education, or special or technical education. All children are equally entitled to such an equipment and the discerning power of the parent selects the branch best fitted for each boy. One of the sons may choose the legal profession, another the medical profession, a third to trading, and so on. A discreet father, in whose mind no idea of participating in the gains of his sons enters, gives each son such education as would befit him for the profession he is found most inclined to; very probably a larger amount of family funds might be spent on the son gifted with superior intellect. The father couldn't hesitate to spend as much upon the rest of his sons if he found them equally good; and, therefore, if more money is spent upon one son than the other in a family, it is because that son was found more promising and deserving. The father arms each boy with such education and qualification as he (boy) is capable of to fight the battle of life in the world. It, therefore, stands to reason that the cost of such an equipment that the father defrays of his own free will from the family funds shouldn't affect the earnings of each son becoming his own self-acquired property. Learning is not the only qualification for gaining wealth. Character, health, hard work, chances and the will and discretion to turn such chances to good account have much to do in a man's success in life. It is, therefore, not very correct to say that a man's gains resulted from his learning alone. It is besides most illiberal to make the gains of a man of learning divisible among his brothers equally with him. On the other hand, it may be argued whether it isn't desirable that a man on whose education a larger amount of family funds is spent because of his talents should be left to share his gains equally with his less gifted brothers, as the commentators of the Hindu law would have it, and why the other members of the family should forfeit the privilege of sharing in the above gains which the law of the land entitles them to. I have here only to point out (1) to the extreme difficulty of proving how and why the father happened to spend more money on the education of one son than the others and whether the father was not anxious to educate all his sons alike and spend just as much money upon the other sons and (2) to the disheartening uncertainty that now exists as to the success or otherwise of a suit to participate in the gains of learning of one member of a family. I shall ask those that are for leaving the law alone to pause for a moment and revolve in their minds whether the existing state of law is satisfactory and whether it doesn't demoralize those who work hard to gain wealth as also those who remain idle and plot for sharing the gains of the active member of an undivided family. What number of benami transactions, what amount of concealment of property, fraud and consequent heart burning disappointments, what fabrication of false evidence, what waste of labour, wit and money, what number of profitless suits and waste of public time and the energy of public officials could be saved by making the law certain on this vexed question is another point to which I would invite the attention of those who are for leaving matters alone. It is clear, from the Hindu law quoted in the objects and reasons, that the lawgivers originally intended that vidhyadhanam or gains of learning should be made one's own self-acquired property; but Katyayana, the commentator, interfered and defined it as below:—"What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning." This definition, perhaps, was justifiable as the Hindu society was at Katyayana's time constituted. Whether just or unjust, all the other commentators, except Jimuta Vahana, caught the contagion and gave their dictums accordingly. The effect of these comments has been to handicap the gains of a man's learning and make it partible among the members of a family. The original idea of creating gains of learning as self-acquired property was altogether cast away. Some may, perhaps, think whether such a law as the Bill contemplates will not (in those cases where the father is dead, the eldest brother is the managing member and his brothers minors) prevent the minors receiving such education as their talents deserve and whether it will not serve as a motive to the managing

member to give no education whatever to the minors to save himself the trouble and the family the expense of educating and bringing them up, and whether the law, as it now stands, is not a powerful inducement to give the minors the best education they are capable of. To these, I have only to say that the internal management of the affairs of a family, the circumstances which induce and prevent the education of the minors, are so many and so varied that they cannot be brought under the influence of the law and strictly controlled.

I therefore do not hesitate to say that the Bill, when passed into law, will be an advantage to the society.

From M.R.Ry. V. SRINIVASACHARLU, Avargal, Subordinate Judge, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated Kumbakónam, 19th November 1892.

I have had the honour to receive your favour of the 31st August last accompanied by a copy of a Bill introduced into the local Legislative Council by the Honorable V. Bashyam Iyengar "to declare gains of learning by a Hindu to be his separate property."

In his exhaustive Statement of Objects and Reasons, the learned author of the Bill has quoted *all* the Hindu law texts and the judicial decisions bearing on the subject and is of opinion that "if one were at liberty to deduce the law therefrom, disregarding the gloss of commentaries, however high their authority may be, he will not be far wrong in regarding the provisions of the Bill as being substantially in accord with such law."

This Bill, after its introduction into the Council, has been very anxiously considered and discussed on several occasions by several educated Hindus and a great many of them seem desirous that it should be passed without any alteration or amendment. They are of opinion that whether the Bill is or is not in accordance with the Hindu law, the gains which a Hindu member may make by his industry, skill and learning should be at his absolute disposal whether the education which he has received and which may have mainly contributed to the acquisitions made by him was imparted to him at the family expense or not. Others again seem, however, to take a different view, and, while recognizing the very salutary principle underlying the Bill which tends to encourage habits of self-reliance and self-exertion among the members of a native family, they will at the same time insist upon every member, educated at the family expense or a father's expense, providing from his acquisitions for the education of the junior members of the family so as to give them a start in life and for the maintenance also of their aged and infirm parents. They, too, do not go so far as to advocate the partibility of any property acquired by such persons; but consider that it is but meet that they should not disregard the junior and dependant members, but should, while obtaining the benefit of the Act, make some compensation for it in the way suggested. Very often it is found that a father of humble means educates one of his sons, probably his eldest born, very much out of his means, by mortgaging or otherwise encumbering his little property in the hope that, when his educated son succeeds in the world, he will pay due regard to the bringing up of the junior members of the family. It is not also uncommon that, with a similar hope, a poor parent tries to leave by a sufficient amount of his beggings for educating one of his sons and brings him up. It is asked that whether in these cases it is proper to let go the educated member with his gains, freed of all obligations to contribute towards the maintenance of such parent or to educate his undivided brothers and nephews, and whether one can safely rely on the good will and moral sense alone of such a person. They seem to think that "the moral sense of the youths of the present day is too frail a reed to lean upon and what is merely a moral obligation is worse than no obligation nowadays when each man is for himself and none else." It is feared that, without

some provision in the Bill providing a safeguard for such purposes, the Bill, when passed, will break up the Hindu family system and cause ruin to many families and may necessitate also the introduction of a poor law for the country.

These arguments, indeed, seem to have some force; but how is this safeguard to be provided? There may not be any need for providing for the maintenance of old and helpless parents, as the law already existing will take care of them adequately; but it seems to me rather difficult, if not impracticable, to provide for a legal obligation for the education of dependant boys and girls. What kind of education should be imparted to them and for what period and at what expense, these cannot altogether be well defined and satisfactorily provided for in a legal enactment. One brother may ask for being sent to England for competing for the Civil Service or studying for the legal or medical profession, another may say he will go to Dehra Dún, and so on. Can the person educated at the family expense be compelled to open his purse freely for such demands, even if he had the means for it?

It seems to me unnecessary that any provision for such cases should be made. Whether a person who makes gains by "*his science*" may or may not be educated at the family expense, the duty of educating the junior members of his family, in the absence of family property, may well be left to his good and cultivated moral sense and no legal obligation needs to be imposed upon him. The advocates of the opposite theory need not be reminded of persons who have acquired their education otherwise than at the family expense, showing their generosity by the liberal aid they have given pecuniarily and otherwise not merely to undivided members of their family, such as brothers and nephews, but also to others more distantly connected with them. Numerous instances may be quoted in which people have voluntarily settled a substantial portion of their gains upon dependant members for their support. How many sons of sisters and grandsons by daughters are now brought up by their well-to-do maternal uncles and grandparents. Sons of divided and poor co-parceners are often educated at the expense of their richer relations. What is it that prompts these people to perform these acts of generosity towards such people? No legal enactment imposes any obligation upon them. If so, why should such legal obligation be needed in the case of a person educated at the expense of family property? If the legislature tried to impose one, how long is this to last? Suppose he tried to separate himself by legal measures from the rest of his family, should the obligation continue to exist even after it. To attempt to do so will be to advance a step further than what is supposed to exist under the present state of the law and that obligation may be also sometimes more onerous than declaring his gains to be partible.

It is therefore my humble opinion that the fear entertained of the Bill, when passed, revolutionizing the Hindu family system and disintegrating and ruining families, seems groundless and that the Bill needs no alteration nor amendment. If the moral sense of any person is "too frail a reed to lean upon," he cannot be expected to discharge even his legal obligation. As soon as he begins to acquire property, he may try to frustrate it by enforcing a partition of the little property they may possess then between himself and the other members, and when that is done there will be an end of it, unless the obligation should attach to him even after separation, which, as I remarked already, is neither practicable nor proper.

The learned author of the measure before the Council appears to have carefully thought out the matter on all sides and framed it so as to suit the sense of the educated community as it is at present constituted.

From M.R.Ry. S. NARAYANASWAMI CHETTY, Avargal, Diwan of Venkatagiri, to the Under Secretary to Government, Legislative Department, dated 20th November 1892.

I have the honour to submit the following views on "the Bill to declare the gains of learning by a Hindu to be his separate property."

In my opinion the Bill is an important and a necessary measure, important in removing the distressing uncertainty of law on this subject and necessary in introducing peace into many a Hindu educated home.

3. With reference to paragraph 3 of the Statement of Objects and Reasons, I would respectfully suggest that the provisions of this Bill should also be made applicable to Mussulmans or Moplahs who follow the Marumakkatayam or Aliyasantanam law of inheritance, as they are subject to all the incidents of Hindu families following the same law in the matter of the acquisition, enjoyment and devolution of properties.

From C. RAMACHENDRIER, Esq., District Judge, Nellore, to the Under Secretary to Government, Legislative Department, dated Nellore, 2nd November 1892, No. 661 Civil.

With reference to the letter, dated 31st August 1892, No. 47 (Legislative Department), I have the honour to submit the following report:—

1. The Bill proposes to enact that all gains of learning shall be considered the self-acquisition of the acquirer with a view to bring harmony and good feeling in Hindu families.

2. The mover of the Bill, on referring to the texts of Smirithi writers, the decisions of the High Courts and the Privy Council, concludes that time has come for legislative interference, as he apprehends that the law is vague at present, that it is capable of mischievous consequences, and that the law should be altered by Legislature in accordance with the modern notions of right and wrong.

3. The Hindu law affects not merely the social law of the Hindus, but it is a part and parcel of their religious institution, and consequently the Government have not accepted the suggestions from different quarters to codify the Hindu law.

4. It is contended that the early text writers were in favour of classing all gains of learning as self-acquisitions, and the narrow views subsequently advocated is due to the gloss of the commentators. This reasoning is not acceptable; for otherwise it would follow that we are at liberty to give up the commentators and follow our own interpretation of the earlier texts. If this were so, we should be asked next to give up the law of the Mitakshara to follow fanciful interpretations of the texts of Yajnavalkya.

5. The second ground of the mover is that decisions are vague. There is nothing uncertain or vague in the decisions of the High Courts. The law is certainly clear that all gains of learning is partible if the learning has been acquired at the expense of family funds or where receiving a family maintenance. Of course the *obiter dictum* of the Privy Council might inculcate a different view, but it seems certain that if the full texts were before them they might have come to a different conclusion altogether. But because the views of the Privy Council are somewhat vague is no reason for legislative assistance. If this were so, in every case in which the law as laid down by the highest tribunal is vague or does not meet the requirements of all, the aid of the Legislature would have to be invoked. The other day the Madras High Court decided that a remarried Brahmin widow and her husband are not entitled to go into the inner shrine of the temple. The remarried couple are still Brahmins and why the Legislature should not interfere and pass a short enactment declaring their right to go into the inner shrine on the ground that the decision has the effect of impeding reform and progress.

6. I do not see what enables the mover of the Bill to think that the present law encourages fraud or concealment or gives occasions for benami transactions. Fraud, &c., are due to various causes, and it is not right to say that such transactions exist in a large measure in the case of persons who are able to earn largely owing to their being endowed with learning and consequently high mental culture and endowed with valour or skill.

7. If this piecemeal interference was once granted, then, of course, a deathblow must be given to the present administration of Hindu law.

(*a*) Why should a Hindu widow's powers of alienation be curtailed at the instance of a dayadi of the sixth degree?

(*b*) Why should a Hindu widow's right to retain possession of her husband's property cease with her remarriage, which law has the effect of discouraging morality and encouraging prostitution?

(*c*) Why should a lady just this minute in full possession of all the property with her husband be driven the next moment to sue for maintenance, because the husband happened to die a few minutes earlier perhaps than other co-parceners of the same family. If the law declared a married woman entitled even in undivided families to possession of her husband's share during her lifetime it would be very wholesome and would obviate the miseries of widows.

If all these be matters on which Hindu law is at variance with our modern notions of equity and justice, why should one portion alone of Hindu law be altered by legislation? Why not abolish Hindu law altogether and substitute instead the Indian Succession Act or some other enactments based on no sound principles or customs?

8. Far from promoting harmony and good feeling in Hindu families, the Bill will of course create a good deal of heart-burning where previously it did not exist.

9. The obvious objections to the Bill may be stated as follows:—

(i) It makes a distinction between the gains of learning and gains from trade and other sources and gives all the advantage to the former. It is obvious that a large amount is spent on the education of a Hindu youth. If this money had been spent by another member of the joint family on trade, the whole of his acquisitions become partible, and it is unjust that where there has been expenditure incurred from family funds, one person alone should reap the benefit derived therefrom to the exclusion of the rest.

(ii) In a family possessing a large landed estate and consisting of five members, one receives a liberal education. The other four spend their time and energy in improving the landed property and earning large profits from their personal exertion in improving the land and effecting a saving. The man of learning would be entitled to all the savings earned by the life blood of those four, while he would be entitled to keep for himself his whole earnings. Such a state of things is unjust in the extreme.

From M.R.Ry. V. RAJAGOPALA CHARIAR, Avergal, Treasury Deputy Collector, Malabar, to the Under Secretary to Government, Legislative Department, dated Calicut, 3rd November 1892, No. 582.

In acknowledging with many thanks the receipt of your letter, No. 47, dated 31st August 1892, I beg to submit herewith a memorandum of my views on the Bill "to declare gains of learning by a Hindu to be his separate property" framed by the Hon. V. Bhashyam Iyengar. I beg to be excused for the delay in sending the same.

ENCLOSURE.

The Bill under consideration aims at codifying a portion of the Hindu law and as such has much to commend it. It proposes to deal with what is termed "Vidyathanam" or gains of science and to declare that property acquired by a member of a Hindu family substantially by learning shall be his exclusive and separate property irrespective of the method and means by which he is educated and the person who educated him. The Honorable Mover of the Bill has clearly and fully explained in his Statement of Objects and Reasons the original texts bearing on the subject, the subsequent gloss of commentators and the still later expositions of the law by British Courts of Justice and has described impressively the inapplicability of the law even as enunciated by recent decisions. The simpler and clearer the law, the better and easier it is to the community and the Judges who are to follow and administer it. The proposed Bill has certainly the advantage of simplicity and steers clear of all fanciful distinctions. It is also easy of application.

2. If the principle underlying its provisions should be an innovation, the ingrafting of a foreign element on the indigenous law of the land which Government has bound itself to administer, then indeed one should pause and consider before adopting it. The idea of separate property is not foreign to Hindu law, and "gains of learning" as separate property subject to certain restrictions were apparently recognized by the earliest Smirithi writers. What is now

proposed to be done is to adapt the Hindu law texts to the present state of society by defining the term "gains of science" so as to be more comprehensive. In early times when the several members of a family lived jointly under the control of one head member, whether under the patriarchal or the joint family system and were mostly tillers of soil, there could not have been much scope for self-acquisition nor in consequence any necessity to frame rules to regulate the rights of individual members to it. Partition too must then have been unknown. The present condition of Hindu society is far different. Population has increased and the land available for cultivation is in consequence more restricted. With the advent of the British and the spread of western civilization now wants have sprung up and various fresh walks of life and vocations have been opened out. We find around us a hot race and a keen competitions after the worlds best effects in the various pursuits and callings of life. Such being the case it is no longer possible to adhere to the old principle of community of goods, especially that kind of indiscriminate community where the whole belongs to each and every member of a joint family. It is therefore but apt that legislation should provide for securing individual rights in a manner consistent with the change in the times. The legal recognition of separate property will be an incentive to individual exertion and will be productive of substantial good to the community in general.

3. The provisions of the Bill will decidedly be acceptable to the educated portion of the Hindu community; for it is the educated members of a family who are able to acquire separate property and the Bill secures their rights to their self-earnings as against the others. If in the class of educated may be included all those who have had the benefit of "learning" in the comprehensive sense in which the term has been defined in the Bill, then they may be said also to form a major portion of the Hindu community. The Bill may not be acceptable to the now comparatively few idle members of Hindu joint families who without contributing anything themselves towards accession to the family fund profit at others expense, but it is a point for consideration whether this need weigh much with the Legislature in introducing a measure which it is satisfied is good by itself and is demanded by the exigencies of society as at present constituted.

4. Let me now proceed to the consideration of the objections it is possible to raise against the Bill. The first is that if it should become law it would affect prejudicially education. The head of a joint Hindu family will not care, it might be argued, to educate the minor members when he sees that what they acquire by means of the education so imparted cannot be claimed either by himself or for the common benefit of the family but would go towards aggrandising the members educated individually and their personal heirs. In the first place we do not find as a rule large joint Hindu families comprising several members, such as brothers and cousins, uncles and nephews, in existence now. The tendency on the other hand is in the direction of families splitting up; several disintegrating forces are at work which bring about the dissolution of a joint family and the creation in its stead of many offshoots each with a narrower sphere where the family tie and affection is strong between its component parts. Instances are not uncommon of even sons dividing from their fathers when they grow up and begin to have a family of their own. Ordinarily a Hindu father does not educate his son in view to the prospective good which he hopes to obtain thereby. It is more his instinctive attachment to his son and the desire to see him launched well in life which act on him. As between his different sons if he should spend a larger amount in educating one in preference to another, it is a mere matter of accident depending as it does upon the peculiar aptitude of that son and such other similar circumstances. Further even granting for argument's sake that self-interest is the predominating factor, he knows full well that even at present it is in the power of his educated son to frustrate the object in view by demanding partition just at the nick of time when he begins to make any large acquisition. For these reasons the argument of education being retarded by the introduction of the measure has not much force in my opinion.

5. In Malabar, however, the joint family system prevails to a larger extent and the provisions of the Bill are to be held to apply to families governed by Marumakkatayam and Aliyasantanam systems of law. It is therefore worthwhile to consider what will be the effects of its introduction in that district in respect to education. Even under Marumakkatayam law the acquiring member can deprive the tarvad of the benefit of his self-acquisitions by disposing of them during his life and the tarvad can claim, as a matter of right, only the residue after his death. If the uncertainty of getting the self-acquisition of an educated member to the extent existing at present does not operate as a bar to karanavan's educating the junior members, it seems doubtful whether the consciousness of having no right to it after his death will prove to be any very great obstacle. It appears further that in many cases it is the father, when he is a man of means, who educates the son and not the karnavan of the tarvad, of which the son is the member. The father does not now do so with a view to any prospective benefit either to himself or his family, and the Bill will not therefore affect his endeavours in that direction prejudicially. There is this additional advantage in the present Bill becoming the law that the craving of the educated portion of Malabar as evinced in another Bill now before Government for the legalisation of their marriages and the recognition of individual right to self-acquisition so as to devolve the same on their personal heirs would be partly met and satisfied even though there should be any difficulty in getting the other passed by reason of its aiming at a change in the very constitution of the society.

6. Another objection which might be taken to the Bill is that though it is all well and good from the standpoint of an acquiring member, its provisions are not fair as against the person who educated him and placed him in a position to acquire. Let me for the purpose of illustration take an extreme case, say, of a father who possessed very little means divests himself of all that he could share in giving his son a high English education. Let me also suppose that the son becomes successful in life but turns out his father adrift at a time when he is not in a position to support himself. As the law stands at present the father and son are undivided members, the education has been imparted at the father's expense and the father can claim, as a matter of right, a share in the self-acquisition of his son. Under the Bill, however, the son's earnings will form clearly his separate property to which even the father cannot well lay claim. A case of this kind occurring is no doubt improbable. Family affection is generally strong amongst Hindus and an educated son specially is not likely to lose his sense of moral rectitude to such an extent as to abandon his own father. Still such a contingency is possible and the Bill does not provide for it. Again the father and the son may live harmoniously, but the son may die leaving a childless widow behind him and a large property consisting exclusively of his self-acquisition. Under the Bill as between the widow and the father the former will have the precedence and the result might be that the father is left destitute. It might be asked whether this is not a harder case to be safe-guarded against. In the first place acquisition by "learning" is only one of several kinds of separate property recognised by Hindu law. This incidence of hardship is equally applicable to the devolution of other kinds of separate property and there is no specific reason why "gains of science" alone should be dealt with in a different manner, as between the father and the widow it is the latter that is likely to be more helpless and to stand therefore in a greater need of protection, and a law which secures her rights cannot be said to be inequitable. As a matter of fact we seldom see the father's interests jeopardized by those of the widow and they are not likely to be the worse off also when this measure becomes law.

7. As already stated the case above put forward is an extreme one. The dispute in respect to self-acquisition does not arise ordinarily between a father and his son or the son's heirs, but between collaterals one or two degrees remote, as between them the personal heirs of the person leaving large self-acquisition are certainly fitter objects of protection by law than those others whose claims are more remote. It might be said that a father in educating some of his sons expects the others also to be benefited thereby and that it will be frustrating the object he had in view by depriving the other sons or their heirs of their rights. When one is so disposed we might expect him to provide liberally for such other members, and this is what is actually done now. When he is not so disposed any amount of external pressure is not likely to be productive of the desired result. On the whole it is a matter which should be left to adjust itself according to the circumstances of each case rather than to be safe-guarded against by legislation.

8. Another objection which might be raised against the Bill is that by recognizing in unmistakable terms another form of separate property in respect to which there was till now a considerable amount of uncertainty and restrictions, it will have the effect of bringing about a further disintegration of the Hindu joint family system which is the normal condition of Hindu society and a further diffusion of property which is of doubtful utility to the welfare of the community at large. As regards the first portion of the objection in a society where partition is recognized by law and is enforceable on the motion of any one member of a family, the joint family system cannot thrive and must break up sooner or later. The effect of the present Bill will be not to accelerate the progress of disintegration, but to defer division by removing the cause of anxiety in the acquiring member which forces him to become divided when otherwise through feeling of delicacy and other considerations he may find it undesirable to do so. Whether the concentration of wealth in selected quarters or its diffusion amongst several is of greater benefit to a community is a controverted question which it is unnecessary here to dicuss at length.

9. No other possible objection suggests itself to me. Even granting that there is some substratum of truth in the abovementioned objections, it must be admitted that the introduction of the measure proposed is likely to result in producing all the advantages enumerated in the last paragraph of the Statement of Objects and Reasons. The question to be decided then becomes whether the advantages or the disadvantages preponderate. On a careful consideration I am inclined to believe that the good will outweigh any possible harm which might arise and I therefore support the Bill.

31*st October* 1892.

From M.R.Ry. C. KALYANASUNDRAM CHETTIAR, Avargal, Assistant Superintendent of Stamps and Stationery, to the Under Secretary to Government, Legislative Department, dated Madras, 15th November 1892.

With reference to your letter No. 47 of the 31st August last enclosing a copy of "a Bill to declare gains of learning by a Hindu to be the separate property" and the

ENCLOSURE.

Note by M.R Ry. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, dated Ellore, 18th October 1892.

This Bill aims at removing the uncertainty of the law of "Vidyathanam" or "learning money." According to Katyana, "Vidyathanam" is that which has been acquired after instruction received from a stranger and a maintenance provided by one of a different family. It is partible if the education has been imparted by a member of the family or at the expense of the family funds whatever may be the nature of education received. The Madras High Court first adopted this principle and in subsequent cases drew some distinction between ordinary and scientific education.

2. But what was scientific education in one may be considered ordinary in another age particularly of progress and civilization, and the law will continue to be uncertain unless the education is defined. Of course, the Bill is opposed to the spirit of the law as propounded by Katyana and other commentators, but it is one well adapted to the condition of modern society. Even under the existing law one can claim his share and thereby come to a division when he thinks he can earn more. The other members cannot object to the division whatever be the aid the claimant has received from the family funds for his education.

3. But a Hindu who knows that he is earning more than his brothers is generally averse to partition, not out of any love to them but for fear of being called selfish. He therefore continues undivided and is at the same time reluctant to allow the other members equal or any share in his acquisitions, while the latter who are perhaps idle and do not work to support themselves or to improve the family resources think that they are entitled to an equal share with the acquirer and often press their claims to his annoyance. To get over this difficulty some are indifferent to even their own interests and do not work. Some conceal their property and secure it in other names. The Bill will not only remove the temptation for such frauds, but will also wake up the idlers who claim shares in property acquired by a hardworking member.

4. It may perhaps be said that the education of the junior members in a family would be neglected as a consequence of this law. In a well-to-do family the father does not generally expect a return from the son whom he educates at the expense of the family funds purely from a sense of duty. If he spends more for one than for another son, it is because he finds a fitting material in the former.

5. I do not think that the Bill would make any difference also in cases in which one of the brothers happens to manage the family affairs. As stated above there is nothing in the existing law to prevent his asking for divisicn of property if he prefers it. In all such cases the family has to rely more upon the affection, gratitude and good sense of the earning member than upon any legal right created in the others. If the Bill be passed, there will be no misunderstandings, each member knowing exactly his own position. There will be a stimulus for self-exertion and harmony in the family which may continue undivided for longer periods than at present. Then there will be the strength of the joint family without its present drawbacks.

Demi-official from the Hon. P. CHENTSAL RAO, to the Under Secretary to Government, Legislative Department, dated Bangalore, 20th October 1892.

With reference to your letter, dated 31st August 1892, No. 47, I beg to submit the following observations on the Bill introduced by the Honorable Mr. Bhashyam Iyengar on the subject of gains of learning.

2. I consider that in dealing with this subject one should be guided by the opinions and inclinations of the Hindu public at large whose interest this Bill is likely to affect, and not by European notions of the fitness of things nor by the opinions of the small minority of Hindus who have come under the influence of European culture and ideas. If it were a question of the abolition of inhuman practices such as suttee or infanticide, we are certainly not bound to respect the superstitions of an unreasoning majority; but where, as in this case, we attempt to legislate in regard to rights to property and the existing methods of distribution thereof, we should certainly not be justified in disturbing the Hindu customary law on the subject without a strong concensus of popular opinion in favour of a change. These rights and these methods of distribution have grown out of family affections and tendencies to hold together which are far from being inhuman or immoral. I would therefore suggest the appointment of a commission for ascertaining the opinion of the public in the matter.

3. I have discussed the subject with several disinterested intelligent and orthodox Hindus and I find that they are generally against the law proposed by the Honorable Mr. Bhashyam Iyengar. They consider that the view held by the Privy Council and the consequent subsequent decisions of the Bombay and Madras High Courts are opposed to the Hindu Law and they are also unable to appreciate the justice and equity of declaring the gains of learning as separate property of the acquirer when such learning has been acquired at the expense of the family. I pointed out to them the inutility of declaring gains of learning divisible when it is within the power of the acquirer to make them his own by the mere exercise of his option to force a division, and the characteristic answer I received from an orthodox pandit was that if a person who receives education at the expense of the family proves so ungrateful as to force a division immediately he commences to acquire money, why then he would resign himself to his fate, but regard the ingrate as dead to the family. This contingency, however, he contended, was no reason why the Legislature should step in to make things smooth and easy for the ungrateful deserter. The above remark is within my experience merely illustrative of the feelings entertained by the people in this matter, and I know for a fact that in Southern India, the breaking up of a coparcenary by one of the members who is able to acquire money to the detriment of the others who are as yet unable to stand on their own legs is regarded by the society as highly reprehensible, and this dread of popular reproach has in many cases either deterred the earning member of the family from forcing a partition till the others are fairly in the way of earning for themselves or has induced him to give up portions of his share in the patrimony to his less fortunate brethern. Thus, the existing practice under which the gains of learning are divisible when the learning was acquired with the aid of the family funds is not without some practical advantage to the poorer and more ignorant members of the family whose ignorance, however, is in very many cases due merely to the fact that the slender resources of the family could not meet the expense of educating more than one member thereof. The advantages to the poorer members above pointed out would be lost should Mr. Bhashyam Iyengar's Bill become law.

4. Coming to the Hindu law on the subject as laid down in the texts and interpreting them, not according to the European method of construing a passage by the plain meaning of the words, but by the Hindu method whereby the meaning of the text is made to conform to approved usage and corresponding texts of other text-writers of authority, I can come to only one conclusion, viz., that *all* property acquired by members of a joint family by means of learning is divisible unless that learning is of a special kind and acquired without the use of family funds. This also the view of the Mitakshara which is the paramount authority in Southern India on matters of inheritance and it is certainly the law which exists in the consciousness of the people and is approved by their conscience. The author of Mitakshara goes to the extent of holding that even absolute gifts obtained by a coparcener *without detriment to the family property* are by law and usage common property thereby enforcing his position that it is only gains specifically excepted by the texts and acquired by extraordinary exertion of individual energy that do not go into the common stock. In fact Vignaneswara thought, and following him Hindus generally think, that divisibility attaches as a rule to all gains acquired by every member of a joint family, non-divisibility being the exception in certain specified cases, one of these latter being the gains of learning acquired without the aid of family property.

5. Such unquestionably being the Hindu law on the subject, we have next to consider whether the provisions of the Bill are equitable and there is any particular social advantage to be gained by altering the law in the manner suggested.

6. I cannot say that the law proposed is equitable. If in a joint family consisting of 4 brothers, A, B, C, D, A works on the family farm, B employs himself in trading, C practices in the Court and earns money and D looks after domestic management, the most equitable arrangement would be to treat all the earnings as the common property of all the four and not to exempt the earnings of C alone from division. It may be that all the other members had the use of the family capital,

while C used his brains alone, but so long as they choose to remain undivided, I do not see how C can equitably claim his earnings to himself and yet claim a share in the entire earnings of the rest.

7. Nor does it appear to me that the declaration that gains of learning are indivisible is a decided social advantage. If on the one hand it induces the acquirer to exert himself better, it has on the other hand a tendency to make the other members of the joint family less contented and less industrious. For instance, in the case mentioned in the preceding paragraph, it would certainly deter A, B, and D from putting forth the same amount of energy as they would if they had a share in the earnings of C.

8. It cannot also be said that under the law proposed litigation would diminish and suits for division would become less. Mr. Bhashyam Iyengar's law may render it unnecessary for C to go to Court for a division, but it is sure to encourage the other brothers to go to Court.

9. The only advantage of the Bill is that it will to some extent effectively check the spread of demoralization. It will surely make it unnecessary for C, the acquirer of money by learning, to conceal his acquisitions, or to enter into fictitious *benami* transactions to save them from division, but here we must pause and consider whether *benami* transactions in the case of such earnings are looked upon by the public as an excusable means of evading the rigours of an unjust law or as improper and dishonorable. If the former be the case, the law must be altered, and if the latter be case the remedy should be, not the declaration that gains of learnings should be regarded as self-acquired property, but a declaration that such *benami* transactions are punishable offences. Of course a great deal of falsehood would cease if official corruption is legalised, but no one would recommend it on that ground. So far as I know benami transactions are considered by the public as dishonorable even when they take place in connection with one's own earnings, and therefore if they are to be discouraged it must be by some means other than of declaring the gains of learning by a member of a joint family indivisible.

10. It may be urged that on the whole the advantages of declaring the earnings accruing from one's own exertions as self-acquired property preponderate as a motive for exertion. If so, and I have no doubt it is so, our law must have much larger scope than that proposed by the Hon. Mr. Bhashyam Iyengar. We will have to declare *all* gains due to *personal exertion* whether with or without the aid of the family property impartible. For instance, in the case mentioned in paragraph 6 *supra*, not only should C be entitled to all his earnings but also A, B, and D to the *increased* earnings and savings due to their industry and skill. But I know that such sweeping legislation is beset with endless difficulties and cannot at present be undertaken with any chance of success.

11. All circumstances considered, therefore, I think that in the present condition of Hindu society and the feelings of the people as regards personal acquisitions if any legislation is needed at all to remove uncertainty, it is in the direction of declaring the gains of learning divisible when the learning has been acquired at the expense of the family property. If such a law would induce people to separate from joint families more largely than they do at present, nothing can be more desirable. I consider that the joint family system is a clog to enterprise, a damper to self-exertion and the curse of India and the sooner it ends the better for the country.

Demi-official from A. RAMACHANDRA AIYAR, to the Under Secretary to Government, Legislative Department, dated Bangalore, 25th October 1892.

With reference to your letter No. 47, dated 31st August 1892, I beg to forward my views on the Bill introduced by the Hon. V. Bhashyam Iyengar.

ENCLOSURE.

The Bill meets with my approval, as I am inclined to think that it is in conformity with the usages of the people. If a man who has been educated at the expense of the family earns property, the earnings are treated as his own. If he gives any property to his brothers, it is

received with professions of gratitude, and if he divides his property equally or almost equally with them, or if he treats his children and their children alike, he is praised by the public for his generosity and filial affection. If his brothers stand in need of assistance, they do not claim anything as a matter of right. When I make these remarks I have in my mind about two dozen earning members who are natives of Madras, Tanjore, Tinnevelly, Coimbatore and South Malabar. These cases indicate that in the opinion of the people a man is absolute master of what he earns and that it makes no difference whether he received his education wholly or partially at the expense of his family or what was the character and quality of his education.

2. Although there is some difficulty in reconciling the texts as to the exact signification of the expression "gains of learning," it seems to me that the law left the acquisitions of an educated man entirely at his disposal. If it was otherwise, the Hindu law of partition or division would have contained a provision preventing an earning member who was educated at the expense of his family from claiming a partition at his pleasure, or the law would have enabled a Court to decree a share of his prospective earnings for the benefit of his less fortunate brothers.

3. It has been urged by some men that a father spends all his property upon the education of one son in the hope that the latter will prove a father to his brothers, that the Bill will defeat his just hopes and expectations, and that such instances are numerous. The father and other sons have no legal hold upon the earning member as is evident from the fact that the law gives him power to separate himself from them at any time. If he does not exercise that power, if he maintains his brothers and even shares his property with them, it is by reason of his natural love and affection. Again, non-division is the normal condition of Hindu families and one does not willingly act contrary to the law and usages of his people. If a man separates himself when he is able to stand on his own legs and when his father and brothers need his assistance, it is base ingratitude and selfishness and public opinion will point the finger of scorn at him. It is these moral considerations that impel an educated man to act considerately and even generously towards his father and brothers and other members of his family, and I see no reason to fear that if the Bill is passed these considerations will cease to exercise their legitimate influence.

4. The law being somewhat unsettled by decisions, I think that the point should be set at rest by the Legislature. A Bill which is in conformity with the Hindu law, or at all events with the law as understood and acted upon by the people, ought not to be open to any objection.

(Signed) A. RAMACHANDRA IYER.

From M.R.Ry. C. GOPALAN NAIR, Avargal, Sub-Judge of North Malabar, to the Under Secretary to Government, Legislative Department, dated Tellicherry, 26th October 1892.

I have the honour to acknowledge your letter No. 47, dated the 31st August 1892, sending me a copy of "a Bill to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the Local Legislative Council, and to state, in reply, that I am a strong supporter of this Bill. The principle embodied therein has always been accepted as customary law among Marumakkatayam and Aliyasantanam people in the districts of Malabar and South Canara, and in all my judicial experience of over 24 years in these districts, I have never known a single case among them in which any acquisitions made by one member of a family by means of learning were ever claimed by its *karanavan*, *ejaman* or other members as belonging to the common estate by reason of his being educated with the funds of such family. Even among other Hindus in these districts and elsewhere, it seems to me that no doubts would have arisen but for a few decisions based on obsolete texts of Hindu law which themselves had their origin at a time when the patriarchal system was in its ascendency and when the existence of private property and the right of division among co-parceners were almost unknown among Hindus, and I need scarcely add that all such views have disappeared even with orthodox Hindus of rigid conservative views in the present state of society.

2. I have no fears that the fathers or other managers of families would ever neglect the education of their sons or other members merely because the effect of such a law would make the earnings made by such education the separate property of the acquirer, and it appears to me highly desirable that all doubts on this part of the law should be removed by a legislative enactment on the lines of the present Bill.

In the second case it was laid down that when a Hindu made a large mercantile fortune, his claim to hold it as self-acquired was good, though he was maintained in his earlier years, educated and married out of patrimonial means.

Of course the education in this case is only an ordinary one.

8. So the question will have to be decided with reference to the nature and extent of education and of the funds used as the facts present themselves in each particular case. Some occasional difficulty in ascertaining the facts may not be sufficient to alter the law. The Bill seems neither in accordance with the original Hindu law texts and commentaries nor with the decisions in reported cases. The Bill is a distinct advance on the present state of the law, and however salutary its effects may be on some persons, it is difficult to see that at the present state of Hindu society the distressing uncertainty of the law complained of in the speech of the Honorable Mover is sufficiently felt as a hardship so as to require special legislation. The following difficulties are felt by many persons as real.

9. If the Bill is passed into law it may probably interfere with the promotion of higher education among the members of the Hindu family, since no one member will allow a proportionately large outlay from the family funds in favour of one of the members for *no benefit* to others.

10. Instead of retarding division among the members, it may rather expedite it, so that the cost of educating a particular member may be defrayed out of his share. The elder members may lose their interest in getting their younger brothers educated in the higher branches of education. If the share of a particular intelligent member is not sufficient for his education, the promising youth finds himself cut off from his future prospects.

11. This Bill may further lead to the result of altering the existing Hindu law of self-acquisition from other sources. If the gains of learning imparted at the cost of the family is made to be indivisible, the same rule will, in justice and equity, have to be applied to other cases of self-acquisition by other members who use the family funds in their avocations, for instance, trade, farming, &c., and it is difficult to draw the line between gains made by learning and by other means. A Bill dealing with a branch of self-acquisition leaving the other branches of the same untouched is not very clear.

12. There are other branches of Hindu law about which the texts and decisions are conflicting—the law of adoption, stridhanam, bhandu relationship, gifts, wills, benami transactions, &c. Mere hardship to particular members and difficulty of decision may not justify to legislate on these points.

13. Lastly, it may be a question whether it is advisable by means of legislative enactment to alter the existing Hindu law by which the Hindus have been till now governed, or whether it may not be safe to leave it to be administered by our eminent Judges according to the facts of each case.

If the Legislature should think the former necessary and expedient, some provision in the Bill ought surely to be made for compensating the other members of the family for the outlay from the family funds made for the purpose of educating the earning member.

TINNEVELLY, 18*th October* 1892. (Signed) P. SUBRAMANIYEM AIYAR.

From M.R.Ry. S. SUBRAMANIEM AIYAR, Dewan Bahadur, to the Under Secretary to Government, Legislative Department, dated Madras, 18th October 1892.

With reference to your No. 47, dated 31st August 1892, I have the honour to state that I am in favour of legislation on the lines suggested by the Honorable V. Bhashyam Iyengar. I entirely approve of the principle of the Bill introduced by him.

From M.R.Ry. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, to the Under Secretary to Government, Legislative Department, dated Ellore, 19th October 1892.

With reference to your demi-official No. 47, dated 31st August 1892, I beg to enclose a note showing as briefly as possible my views on the Bill therein enclosed.

ENCLOSURE.

Memorandum on the Hindu Gains of Learning Bill.

As the Bill is an attempt to codify one of the several branches of Hindu law, the same will have to be based on original Hindu texts and commentaries, on the modern decisions of Courts and on custom, if any.

2. Before examining the Bill with reference to the aforesaid points, it may be said that in some respects the Bill is commendable, as it secures to the acquirer the gains of his learning and an absolute right of disposition over such gains. In some cases it may prevent unnecessary litigation for untimely partition and keep the family in a state of union. It may also stimulate industry and enterprise in other members of the family who, under the present state of the law, have a right to depend on the earning member for their support. It removes uncertainty of decisions in future litigation concerning the matter and sets at rest one of the vexed questions of Hindu law. It also procures to the acquirer the satisfaction of enjoying the fruits of his own labour without any of the restrictions of an undivided Hindu family. It remedies the hardship under the existing law that persons who acquire their education or training very often in trying circumstances may feel in having to part with the wealth they may acquire in the exercise of any calling or avocation in life to the drones of the family. No doubt it is extremely vexatious for the earning member to part with what he acquired by his own labour. These are considerations of policy and expediency.

3. Notwithstanding all this there are certain other legal and equitable considerations which make the passing of the Bill, as it at present stands, not quite desirable. In this case one may be safely guided by the original texts and commentaries on Hindu law and modern decisions.

(1) Katyayana as quoted in Mitakshara, chapter I, section IV, verse 8.
(2) Narada as quoted in chapter IV, section I, verses 14 and 16.
(3) Manu as quoted in chapter I, section IV, verse 10, and as quoted in Dhayabhaga, chapter VI, section I, verse 3.
(4) Vyasa-Dhaya bagha, chapter VI, section I, verses 4 and 14.

4. With reference to the former, the first two of the marginally-noted texts are very clear on the point and lay down the rule that what a man acquires by means of his learning *at the family expense* are divisible among all members. The other two of the marginally noted seem to be not so clear at the first sight, but when properly construed clearly point to the same conclusion.

5. But sometimes the meaning of original texts is obscure and the original treatises on Hindu law bearing on the texts and expounding the law are always accepted as safe guides and acted upon by Courts.

6. Mitakshara, Dhayabaga and Vyavahara Mayuka among others, which are original treatises expounding the Hindu law, are very important.

Mitakshara, the most important treatise on the law of inheritance and partition, being a commentary by Vignaneswara on the Yagnavalkia Smrithi, is accepted as the leading authority on Hindu law in Southern India. The subject of this Bill is very fully discussed in this in chapter I, section IV It clearly lays down that what a man gains by learning by using family funds is divisible among other members.

Dhayabagha, a treatise on inheritance by Jimuta Vahana, is accepted as the leading authority on Hindu law in Bengal. The question is elaborately discussed in chapter VI, section I, verses 4, 14, 16, 19 and 46 to 52. While agreeing with Mitakshara in general principles, it makes a distinction between gains of learning imparted at a special cost for a special training and those acquired by a person to whom only an ordinary maintenance and rudimentary and general education were given, making the former divisible and the latter indivisible.

In Vyavahara Mayuka, a leading Hindu law treatise by Nilakanta Batta, the subject is treated at great length. It fully agrees with Mitakshara in declaring that what a man earns by learning imparted at the expense of patrimony is divisible among all members—*vide* chapter IV, section 7, verses 1 to 14.

7. As for decisions: It may safely be said that there is not a single decision going to the full extent of the Bill that gains of learning under all circumstances are indivisible. The spirit of the decisions seems to be that the gains of learning imparted at a special cost of the family for a special occupation, making it the immediate source of gain, is partible, and those acquired by a person who received only an ordinary education at the family expense is indivisible. The Privy Council has not yet expressly decided the point. In addition to the various cases cited in the Statement of Objects and Reasons, the marginally-noted cases may also be noticed. In the first case it was held that "where the property descended is *incapable* of being considered as the germ whose improvement has constituted the wealth subsequently possessed, this wealth must equitably be deemed self-acquired."

(1) Guruchurn *versus* Goloockmoney cited in Mayne's Hindu Law, paragraph 261.
(2) Chellaperumal *versus* Veeraperumal, 4, Madras Jurist page 54, cited in Mayne's Hindu Law, paragraph 259.

2. I beg to premise that the principle, scope and objects of the Bill have my hearty sympathy and unqualified approval.

3. The honorable mover of the Bill has so ably and correctly expounded the present state of law in the matter that I deem it hardly worthwhile to quote any more authorities bearing on the subject. I may, however, add that even the orthodox portion of the Hindu community living in these parts does not, so far as I have been able to gauge its feeling, look upon the Bill with disfavor.

4. The distinction between "technical or scientific education" and "elementary or liberal education" has, I think, been very properly abrogated in the Bill. It is difficult to draw a precise line of demarcation between the two. What might be regarded as special education at one time may form part of the general education at another. A comparison between the old and present curricula of our Indian colleges and schools will show this beyond all doubt.

5. The present uncertainty of law has a tendency to induce the member of a Hindu family to seek for a division or to conceal his earnings and invest them *benami*, while otherwise he may be willing to leave the ancestral property intact for the common benefit and honour of the family. I am aware of numerous cases of this nature.

6. The proposed legislation is doubtless calculated to harmonize the Hindu law with the conditions and requirements of modern Hindu society, and the honorable mover of the Bill has not certainly over-estimated the benefits which are likely to result from it. In my humble opinion it is likely to engender and promote habits of thrift and self-reliance upon *that* idle and non-productive portion of the Hindu community which, as but a canker or parasite is now eating up and deteriorating the vital and self-subsisting portion of it; to bring in peace and good feeling among members of a family in the place of mutual distrust and jealousy; to obviate the necessity for a variety of *benami* transactions calculated to keep the self-earnings out of the hotchpotch; and to remove thus one of the sore causes of misunderstandings and litigatiom among the kith and kin otherwise dear and near to one another.

7. The objection raised by several critics to the effect that this Bill, if passed into law in its present form, might deter managing members of Hindu families from securing the benefits of scientific or liberal education to the junior members at the expense of the family funds is more sentimental than probable. In the present state of the Hindu society, there is no reason to apprehend such a catastrophe. It is not mere mercenary motives that induce the managing members of families to provide for the education of the junior members at present. It is either feelings of genuine affection and love of public approbation or fear of reprobation by the community that induce them to do so. The suggestion, therefore, that the recipient of the education should be placed under a legal obligation to recoup the family funds does not commend itself to me.

8. Whether this is a Bill which can properly be introduced before the local Legislative Council is a question which admits of some doubt. The issues involved are more imperial than local, but I assume that the point received due consideration when permission to introduce the Bill was given to the Hon. V. Bhashyam Iyengar. Presumably this Bill is not on all fours in its nature with the Kanyasulkam Bill which was thrown out some time back as beyond the scope of the local legislature.

From M.R.Ry. R. SUBRAMANYAM AIYAR, Registrar of Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Tinnevelly, 18th October 1892.

With reference to your letter No. 47 of the 31st August last, I beg to inform you that I have this day despatched by book-post a memorandum containing my views on the Hindu Gains of Learning Bill.

to the people their own laws in matters of inheritance, adoption, marriage and religion. But modern education and modern culture are daily modifying the views of even the most orthodox Hindus on all these important questions. And the change proposed by the Bill will be really in accordance with the law laid down in the oldest Hindu law books.

8. Since the publication of the decision of the Privy Council in Pauliem *v.* Pauliem (Indian Law Report I, Mad., 252) the tendency of the judicial mind as to the self-acquired character of the gains of learning has been towards adopting the more liberal and certainly the more reasonable interpretation of the Bombay High Court in preference to the extreme view reiterated by Justice Holloway in D. Gangadharadu *v.* D. Narasanna (7 M.H.C.R., 47). Even in this latter case Kindersley, J., observed that there is a natural inclination in favour of such an interpretation of the law as would secure the fruits of a man's professional earnings for his own branch of the family.

9. The Bill proposes to put the gains of special or scientific learning on the same footing as those of ordinary education. This is going a step further than what has been recognized by the Bombay High Court, but the reasons assigned are cogent and satisfactory. And the benefits that are likely to accrue by the passing of the Bill into law are not overrated therein. The fairness of the proposed measure cannot reasonably be disputed by any section of the Hindu community. Nor does it tend to disturb any vested rights of property, because, however liberal an eduction a member might have received at the expense and to the detriment of the family property, there is nothing to prevent him from effecting a division the moment he begins to acquire the fruits of his learning and thus deprive his co-parceners of any share therein.

10. Though the Hindu law favours partition, the average Hindu will not generally adopt the processes necessary to effect a complete partition for reasons too numerous to be detailed here, but will be tempted to resort to the *bename* and other devices in order to secure the fruits of his learning to his branch of the family, which eventually result in ruinous litigation.

11. The remedies of the personal creditors of a member of a joint Hindu family are now more difficult and attended with greater risks than they were hitherto supposed to be. In Venkatarama *v.* Meera Lebai (Indian Law Report 13, Mad., 275) a Division Bench of the Madras High Court held that a purchaser from a member of an undivided family of that member's share in a specific portion of the family property cannot sue for partition of that portion alone and obtain an allotment to himself, but must seek partition of the whole family property; and a Full Bench of the same Court has recently held (Indian Law Report 14, Mad., 408) that the share to be awarded to him should be computed with reference to the state of the joint family *at the date of the suit*.

12. A statutory declaration to the effect that the gains of education of a member of the family are his exclusive property will considerably raise his credit and status in public estimation and will in the long run tend to stimulate the exertions of the other members of the family. And it will also calculate to put an end to unseemly family quarrels and remove the extreme uncertainty in the present state of the law with regard to acquisitions made by a Hindu by means of his learning.

13. It will tend to foster independence and to develop individual resources and it will promote harmony and mutual goodwill among the members.

14. On the whole I am in favour of the Bill in question and I do not find any weighty objection to it.

From M.R.Ry. C. VENKOBACHARIAR, Subordinate Judge, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 15th October 1892, No. 1025.

In reply to your communication No. 47, dated 31st August 1892, I beg to state that I see no urgent necessity for the proposed legislation. It does not appear from the papers that I have been able to read on the subject that any representation was made to His Excellency's Council invoking interference by legislature. The supposed uncertainty in the law as to "gains of learning" is not peculiar to that branch of Hindu law. There are many other points both of Hindu law and other branches of law and jurisprudence which may not be said to have been free from uncertainty. In my humble opinion the proposed Bill may, as a part of the general law codifying the Hindu law, which codification, if it at all takes place under the auspices of legislature, may be a desirable measure in a modified form for general legislation. But at present the great uncertainty spoken to by the Honorable Mover of the Bill is not such as, in my opinion, to call for legislative interference.

2. The Smritis in the way in which they have been written clearly lay down the law on this point, though with slight variations here and there. It is in the

interpretation of the texts that difficulty has been felt, and it may be said that it has not been unanimous. But so far as it has received attention at the hands of Judges, it seems to have been pretty clearly settled what acquisitions are those which the acquirer can claim exclusively to himself, and what he cannot. Viewed in this light also there seems to be no necessity for legislation on this point at present.

3. The Bill may possibly affect, or, when passed into law, may be given effect to by a few persons who might wish to avail themselves of its provisions. But what is aimed at by the Bill is likely, in my opinion, to introduce changes in a Hindu family which might produce serious and unpleasant results. Apart from those cases in which fathers and brothers of refined culture and feeling, who might educate their sons and brothers from disinterested motives and from a sense of duty, there are many instances in which poor fathers encumber their little property for educating their sons in the hope of bettering the condition of the family. What is to be the lot of the father, whose son discards him on the strength of the proposed Bill as soon as he begins to earn money? No doubt the father was bound to impart elementary education, but he was not bound to spend his little fortune in bringing up his son. Each man may have his own views as to what elementary education is. If mere rudiments are taught, such as are taught in a pial school, they may cost very little or nothing. Now the cost of education has greatly increased and the education up to B.A. is, I understand, ordinarily known as general education. I am told that it costs at the lowest a 1,000 rupees to educate up to the B.A. degree. If this is so, it is fair to suppose that, when a member of a family incurs any outlay in imparting education to a junior member anything more than indigenous education, he expected to be reimbursed by the member who is benefited by that education. I may quote the very apt instance of a member being sent to England for studying for the Civil Service or the Bar, given by Mr. Mayne in his Hindu Law, 4th edition, paragraph 259.

4. Take the following case as an illustration. In a family of four brothers, of whom three were given good English education at the family cost and one a rudimentary education, and he being left in charge of family estates consisting of, say, 250 or 300 acres of lands, wet and dry. Suppose the three educated brothers were employed in different places in different walks of life, each earning some handsome emoluments. These brothers can claim their acquisitions exclusively to themselves and also a share in the acquisitions made by the brother in charge of family estate by his own skill and industry. The measure will tend, I apprehend, to this result, namely, that there will be no incentive to give tolerably good education to junior members so as to fit them for employment in the ordinary walks of life. A selfish person will always act according to his own nature, and there may be some who are ill-natured to advance special rights and disturb the family peace, but, on the whole, the state of society, as at present constituted, does not, I respectfully submit, warrant the introduction of this measure.

5. Policy and the progressive state of society may no doubt be brought in as causes necessitating this measure. I cannot see that the progress of society has been retarded by its absence. The matters put in the speech of the Honorable Member as tending to induce the earning member to take himself off from the joint family are not, I think, of much force. There is the belief still in the strong family ties, and it is believed that when a member consumes family money for his use, he will, when he earns, support those who do not earn or are incapable of earning. The result of this measure will, I humbly think, tend to disturb this equanimity and good feeling.

From M.R.Ry. Rai Bahadur V. JAGANNADHA ROW, PANTULU GARU, Deputy Collector in charge of Treasury, Godávari, to the Under Secretary to Government, Legislative Department, dated Cocanada, 17th October 1892, No. 2570.

I have the honour to acknowledge receipt of your letter, dated the 31st August last, No. 47, and its accompaniments relative to the Gains of Learning Bill, and beg to submit the following remarks thereon.

facilities of communications, the earning members of families are now in many cases dispersed all over the Presidency and not confined, as in former times, to the immediate neighbourhood of their villages. Further, the rule that what is saved shall be liable to partition is tantamount to placing a premium on extravagance or concealment of property and leads to demoralization. Fourthly, the Bengal rule furnishes an intelligible and easily applied criterion for determining what shall be considered family property and what self-acquired property by declaring that, to make the earnings of a member fall within the former category, family funds should have been directly employed in their acquisition.

4. I fully approve, therefore, of the provisions of the Bill and beg strongly to urge on Government the necessity for passing it as early as possible. The settlement of the law by means of legislation will prevent much heartburning and dispute among the members of the family which the present state of the law gives rise to. What generally happens in Hindu families is this: so long as the earning member lives there is seldom any trouble; the other members look to him for protection and know that, if they put any pressure on him, it is open to him to separate himself from the family and thus cut off their supplies. When he separates himself of his own accord he generally makes, out of his self-acquisitions, provision for the other members to the extent of his means, though he does not feel bound to consider his cousins, nephews and other distant relations as being on the same footing as his own children whose interests have naturally the first claim on him. It is when he dies leaving a widow, more or less helpless, and young children, more especially girls, that the troubles commence leading to much fraud and waste of property. The proposed legislation will effectually put a stop to these evils and be of great benefit to the country.

5. There is one other question to be considered, namely, would the proposed legislation restrict the application of family funds to the special education of some of its members more than the present law does. I do not think that the application of family funds would be appreciably affected, more especially when it is remembered that it is open to a member of a family, after receiving a special education, to separate himself from the family, and that the law entirely leaves it to his sense of moral obligation to continue in the family and be of service to the other members in return to the benefits received by him. On the contrary, it seems to me that the proposed legislation would promote harmony and mutual goodwill among the several members and prevent the breaking up of joint families as long as it is convenient for them to live together. Often a member of a family who earns a large income may, out of regard for his parents and affection for his brothers and sisters, like to continue in the family and provide for their comfortable subsistence out of his earnings, provided he is not obliged to throw the whole of such earnings into the common fund, thereby beggaring his own children. When the choice is presented to him either of separating himself entirely from the family or of giving up all his self-acquisitions, it is not difficult to see what his decision would be and how detrimental that a law of this kind must in the long run be to the interests of the non-earning members of the family.

6. Lastly, I beg to state that no religious question whatever is involved in the proposed legislation and that there need be no misgivings on this score.

From M.R.Ry. D. V. RAMAYYA PANTULU, Government Pleader, Ganjam, to the Under Secretary to Government, Legislative Department, dated Berhampore, 1st October 1892.

With reference to your letter No. 47, dated the 31st August last, forwarding to me a copy of the Hindu Gains of Learning Bill and its annexure and asking for my views thereon, I have the honour to state as follows:—

When the Bill was introduced into the Council in 1891, the Honorable Mover having sent to me a copy of the same, I studied it carefully and expressed my views in favour of the measure.

interpreta again studied it now, and it has confirmed my opinion in its favour.
not been perience as a pleader during the last 22 years has convinced me of the it seemety and subtilty of the questions which arise in connection with this topic Hindu law and of the necessity of a measure of this kind for the preservation of the peace and happiness of many a Hindu family.

The Bill is in consonance with the views of several of the text-writers on Hindu law, it is not at variance with the spirit of the judicial expositions of the law, and it is quite in accord with the present condition of Hindu society.

It is not open to the charges that are sometimes made against Bills of this kind, viz., that it is prospective legislation, that it is uncalled for, that it is opposed to the religious principles or feelings of the people, that it is a revolutionary measure, &c.

I wish and hope that the measure will soon become law and will be followed by similar simple measures on several other vexed questions of Hindu law whose glorious uncertainty is proverbial.

From M.R.Ry. C. SURY AIYAR, Subordinate Judge of Cocanada, to the Under Secretary to Government, Legislative Department, dated Cocanada, 1st October 1892, No. 444–A.

I have the honour to submit herewith my opinion on the "Bill to declare Gains of Learning by a Hindu to be his separate property" as requested in your letter No. 47, dated 31st August 1892.

ENCLOSURE.

Opinion on the Hindu Gains of Learning Bill.

1. The Bill deals with an important branch of the Hindu law. As observed by the Honorable Mover of the Bill, the law upon the subject is not free from uncertainty.

2. The system of the Hindu law which is administered by the Civil Courts is to be gathered from the books written many centuries ago in a language and phraseology that are unknown except to a select few. Judges in the mofussil generally depend upon translations which are in most cases found to be incomplete and not sufficiently lucid, and it affords them much relief to find a decision of the High Court on any points in controversy.

3. The authorities on the Hindu law are numerous and the annotations of the commentators and the opinions of the different text-writers sometimes make matters complex. For instance, in the Smriti Chandrika (section 1, chapter VII, Kristnasamy Iyer Translation, 2nd edition), which is a work of special authority in this Presidency, the quotation from Vyasa, that wealth gained by science belongs to him that acquired it and shall not be claimed by the co-heirs, is followed by several rules laid down by Katyayana and others which so affect and contrast the plain meaning of Vyasa's rule of law as to leave the matter in ambiguity and uncertainty. Judges are often at a loss to decide upon the comparative efficacy as regards the views of different text-writers.

4. The decisions of the High Court, or rather the rules and principles recognized in them, are now mainly looked upon as the embodiment of the Hindu law. But in some instances it so happens that they are relaxed or modified in order to meet the justice of the varying cases that the courts had to deal with. Want of uniformity of decisions or the modification of an earlier interpretation of a rule of law has often been complained of.

In this state of case-law, it is not too much to say that any attempt to reduce any branch of the Hindu law to a degree of certainty deserves every encouragement.

5. That the legislature had already experimented upon legislating on certain topics of the Hindu law, when justice required such a course, may be seen from Act XXI of 1850 (Loss of Caste or change of Religion), Act XXV of 1856 (Widow Marriage) and other enactments.

6. Sir H. Cunningham, the late Advocate-General of this Presidency, had by the publication of his Digest of the Hindu Law, as administered here, demonstrated to some extent the possibility of codifying the same, and it can hardly be denied that the codification of the law confers a boon upon the community. The present Bill may serve us a step in that direction.

7. The principle and the scope of the Bill do no violence to the Hindu notions of property and are consonant to the spirit of the modern times. I do not doubt the wisdom of preserving

(*e*) The Madras High Court in a subsequent case decided in 1872, where the question was as to whether the earnings of a vakil were partible or not, decided the question in the affirmative, Mr. J. Holloway, who was one of the Judges, remarking that "the ordinary gains of science by one who has received a family maintenance are certainly partible," and that, within the meaning of the authorities, a vakil's business is no matter of science. It is somewhat difficult to reconcile the premises with the conclusion arrived at, but, from the remarks of Mr. J. Kindersley, it appears that the decision was that the acquisitions of a member of a joint family, who was maintained out of family funds while receiving a *general education*, were partible. In another case (not reported in the authorized reports), however, where a Hindu had made a large mercantile fortune, his claim to hold it as self-acquired was allowed, though he had admittedly been maintained in his earlier years, educated and married out of patrimonial means. In another case, which went up before the Privy Council, they remarked that the proposition that if "a member of a joint Hindu family receives any education whatever from the joint funds he becomes for ever after incapable of acquiring by his own skill and industry any separate property" was a "startling" one. It was, however, unnecessary to decide the point in the case then before the Privy Council, but they intimated that it might be necessary to consider hereafter the correctness of the doctrine laid down by the Madras High Court in the two earlier cases above referred to.

(*f*) In these circumstances it is impossible to say what the law on the subject is in this Presidency, and the rapid advance of education, coupled with the uncertainty in the law on a vital point like the one under consideration, has been a fruitful source of family dissensions. In Bengal, the rule laid down is that acquisitions by a member of a joint family are partible only in case the funds of the family are directly made use of for the purposes of the acquisition. In Bombay, on the other hand, the High Court has adopted a middle course and ruled that, to make the gains of learning partible, the education imparted at the family expense must be special and not a general one.

3. The object of the present Bill I take to be to declare authoritatively the law on the subject so as to avoid dissensions and litigation it gives rise to. The position taken up by the Madras High Court in its earlier decisions is, as pointed out by the Privy Council, so untenable and opposed to modern tendencies that it is unnecessary to consider it. The choice lies between adopting the rule in force in Bengal and that laid down by the Bombay High Court, and it seems to me that the Bill rightly adopts the former, and that, though there is an appearance of fairness in the Bombay rule, its application in practice will lead to endless difficulties and consequent litigation for the following reasons: First, the standard of education has been constantly shifting and of late years rapidly rising. I myself know that 30 years ago it would have involved a special sacrifice, owing to want of facilities for education, to educate a youth up to the standard of the Matriculation examination of the University; now education up to the B.A. standard is looked upon among the higher classes quite as a matter of course and not a special investment for the benefit of the family; and in a few years more education up to the B.L. standard will be regarded in the same light as a call to the bar is among the upper classes in England. Secondly, the standard of education differs in the several classes of society; what is special education for the poorest classes will be nothing more than ordinary education for the upper classes. Thirdly, so long as there is no means to compel a member of a family who has received a special education either to earn or to save the Bombay rule must place a premium on idleness or extravagance For instance, A and B are educated for the bar. A fails to qualify himself, but becomes a merchant. B qualifies and practises as a barrister. A's earnings would not be partible, but B's would be, though family funds had been equally expended in given a special education to both of them. Again, if B accepted employment as a clerk in a public office, his earnings would not be partible according to the Bombay decisions; but if he rose to the position of a Judge they would probably be partible. Neither A nor B could be called upon by the other members of the family to account for their earnings, and even if the family had any power to do so it would be altogether ineffectual, seeing that, owing to extension of

One may however be anticipated and that from Malabar. It may and probably will be said that the direct result of the Bill if it becomes law will be that all educated people will dispose of their gains of learning in favour of their wives and children; that it will not, as is now the case, be absorbed in tarward property; that in this case the tarward property would no longer prosper; and that the head of the tarward will not care for the education of the members, which in course of time will come to be neglected. I do not attach any value to the objection. As a rule most of the property is even now given away to wives and children in the lifetime of the owner. This is generally recognized to be an underhand dealing, however necessary and beneficial it may be, and it is extremely desirable to legalize it.

With regard to the education of the junior members of a family, the responsibility of the head of the tarward is only theoretical. The practice which I may call almost universal is for the son to be maintained by his father and educated at his expense. I say almost universal, because I cannot remember with one exception any family educating the junior members thereof at its sole expense. I need not name the exceptional case, but all the same the exception proves the rule. In my opinion this measure will have no prejudicial influence on the education of the members of a Malabar tarward. On the other hand the benefits likely to be derived therefrom are incalculable.

From M.R.Ry. Dewan Bahadur S. SRINIVASARAGHAVA IYENGAR Avergal, to the Under Secretary to Government, Legislative Department, dated Ootacamund, 1st October 1892.

Adverting to your circular letter of the 31st August last, No. 47, asking for my views on the Bill "to declare Gains of Learning by a Hindu to be his separate property," which the Hon. V. Bhashiyam Iyengar has obtained permission to introduce in the local Legislative Council, I beg to submit the following remarks.

2. I understand the state of the law on the subject which the Bill in question deals with to be as follows—

(*a*) It is a recognized principle of the modern Hindu law that the self-acquired property of a member of a joint Hindu family is ordinarily the sole property of the acquirer and is not liable to partition among the other members of the family except with his consent.

(*b*) To the above rule the Hindu law recognizes an exception in the case of gains of science, in the acquisition of which family funds had been expended. In the application of the principle thus laid down in general terms, there is the greatest diversity of practice both among the text writers of the different schools of Hindu law and among the several High Courts of Judicature.

(*c*) The Madras High Court in a case decided in 1864 (and which forms the leading case on the subject) has laid down that "the gains or, at all events, the ordinary gains of learning and science which have been taught at the expense of the family funds are not impartible."

(*d*) The scope and precise signification of almost every word in the proposition above referred to is the subject of dispute. The ruling of the High Court leaves it in doubt whether it is to be considered as applicable to "extraordinary" gains of learning; and, if it is not, there is the difficulty of distinguishing between "ordinary" and "extraordinary" gains; secondly, there is the difficulty of determining whether by "learning or science" is meant knowledge acquired by means of a general education which it is the duty of every family to impart to its members according to the standard in force in the community to which it belongs, or special technical knowledge and proficiency; and thirdly there is the difficulty in determining what amount of assistance from the family funds shall be considered sufficient to render the "gains of learning or science" partible, that is to say, whether the fact of the person to whom the knowledge is imparted is maintained out of family funds is sufficient, or whether the family should have made special and unusal sacrifices in view to his acquiring the learning or science.

8. As a rule, a Hindu father spends more money for the education of his elder son, or the brighter son, to relieve him and his relatives in his advanced age or after his death. The Bill acts injuriously upon the well-being of such families. Numerous instances of the kind may be cited. All these difficulties are met by the Hindu law as it stands.

9. It seems to be unwise that Government should create new rights not expressly sanctioned by the Hindu shastras in favour of a small section of the Hindus who gain by learning. The term Hindu is understood to mean any person who follows that religion, and if the rules of that religion would not sanction the provisions of the present Bill, I doubt whether he can call himself a Hindu when he takes the benefit of the new legislation. It is unjust on the face of it to say that the earnings of a member by learning imparted from family funds are not divisible. A Hindu is, as long as his means permit, bound under the law of his religion to provide for himself, his wife, his children, his parents, his brothers, his sisters, his uncles, his cousins, his maternal uncles, brothers-in-law, besides distant relations, house priests, learned and pious men, blind, cripple and helpless of both sexes, and so on. It is in consideration of this binding, the relations and dependants are required to observe pollution at the death of a Hindu, the period of pollution varying according to the degree of relationship.

10. A conservative Hindu who desires to secure his gains of learning for himself has the remedy in his own hands under the existing national law instead of seeking for State interference by means of legislation. Sir Richard Couch, Chief Justice of Bombay, very rightly observed: "There may be hard cases and the remedy is in the hands of the parties themselves, *i.e.*, to divide under the existing laws." A member can claim division as soon as he sees that he may earn better singly than jointly. If he adopts this course, there will be no occasion for litigation, and the member seeking the division shall have full rights over his earnings. It seems a retrograde step for the State to legislate in this matter and create a title in favour of the ablest men. Practically among Hindus poor relations look to rising men in wealth for support. Where a man earns by his learning, his sympathies are mostly with his relations and dependants and he helps them in the shape of meals, cloths, monthly stipends or presents.

11. Suits for partition cannot be highly ruinous except in cases where two brothers earn more than the other members of the family and each of them contends that he earned more than the other. Such cases must, of course, be left for the Law Courts to decide upon the merits of each suit.

12. As a rule, State should be neutral in matters such as these where the question of one's rights under the law of their religion is involved. The proposed measure will gradually reduce to poverty many persons who have been dependent as of right upon their well-to-do relations. Parents are bound by the laws of every civilised nation to protect their children and train them for any of the walks of life, and it is certainly an admitted fact that the son has a duty to perform towards his parents and protect them in their old age. When the parents die, the son has, among Hindus, to perform the funerals and annual ceremonies. It is plain that birth itself is sufficient to make one responsible for the interests of the other members of the same family.

13. I submit that learning alone is not sufficient to acquire a large fortune. Inheritance does not follow learning. Birth carries with it inheritance. I ask whether or not the property acquired by inheritance is divisible. The Hindu law as it now stands meets all such cases according to the nature of the position of a Raja, Zemindar, Matadlupati or other persons whose property is sought to be divided. In the same way the Law Courts alone should, I think, decide what liberal and equitable share should be allowed to the acquirer out of the gains of learning. For instance, the members of a joined Stock Company cannot arbitrarily be denied all profits accruing from the increased skill and labour of one of them, though perhaps it is just that the latter should be remunerated more than others. It seems to me therefore unnecessary that a Bill should be passed for the exclusive benefit of persons who by a mere stroke of fortune, I may say, acquire gains by some learning,

profession or otherwise. All disputes of the kind are generally most amicably settled, with perhaps a few exceptions, without resorting to Law Courts. I have known instances where persons have relinquished their right altogether to family property in consideration of their being able to support themselves by other means and of their brothers not being so successful as themselves. Some have even gone further by recouping family funds which bore the expenses of their thread marriage and other ceremonies. On the whole, I submit, it does not seem to be in accord with the principles of the Hindu religion to say that gains of learning is not devisible.

14. If, however, the preponderance of opinion is in favour of the Bill, I would propose, for the consideration of His Excellency the Governor in Council, that a a moiety of the gains of learning be declared divisible.

From M.R.Ry. T. VENKASAMI ROW, to the Under Secretary to Government, Legislative Department, dated Mylapore, 30th September 1892.

In reply to your letter of the 31st August 1892, No. 47, I beg to state that an enactment as proposed by the Hon. V. Bhashiyam Iyengar, "to declare gains of learning by a Hindu to be his separate property," seems to me desirable.

2. The exhaustive enunciation of objects and reasons annexed to the Bill leaves very little to be said as to the uncertainty which exists with regard to the state of law on a subject of so much importance and the desirability of removing it in the interests of domestic peace and prosperity.

3. I do not think the Bill can be said to overrule a distinct rule of Hindu law, seeing that the law is involved in so much doubt. Indeed, it seems questionable whether at the present day the earnings of a Hindu can be regarded as "Gains of science," which the law-givers intended should in the case of an undivided member educated at the expense of the family be divisible. So far as it is possible to deduce the intention of Smriti writers from more recent judicial interpretations they seem to have recognised a distinction between gains of ordinary or general education and those of which a special training for a particular profession is the direct source. The former they considered impartible on the presumption apparently that the share of each co-parcener in the family property must cover such education of a general character as he receives, and it is to the latter that they restricted the principle of partibility. But in thus excepting property acquired by special learning from the general rule applicable to self-acquired property, they apparently had in view special learning limited to a small number who owe their earnings solely to it. They could scarcely have contemplated a condition of society, such as the present, in which higher education is so widely spread that it does not alone enable a man to earn more than a decent livelihood, and when one's career in life proves more successful, he owes it chiefly to his natural abilities and industry.

4. It does not clearly appear that either the authors or commentators of Hindu law draw a line between *ordinary* and *extraordinary* gains of learning, but the practical application of any such distinction is out of the question.

5. On the whole it seems to me that the proposed Bill, while it is suggested by the dictates of natural justice, can scarcely be considered to be repugnant to the spirit of Hindu law.

From K. C. MANAVEDAN RAJAH, Esq., C.S., to the Under Secretary, to Government, Legislative Department, dated Chingleput, 30th September 1892.

I have to acknowledge with thanks the receipts of the Hon. Mr. Bhashyam Iyengar's Bill with copy of the objects and reasons, and to state that I fully approve of the provisions of the Bill and the reasons advanced in favour of it by the honorable gentleman.

It is a measure most eargerly wished for by all classes of educated Hindus, and I can conceive of no possible objection to it on reasonable grounds.

rare cases of default or apathy, and they will be only rare, a disruption of the family and a partition demanded by the boy or his relatives will result which can be the only immediate consequence, but the facilities and freedom of the boy in the matter of his education will be enhanced and society is not likely to fare worse, nor the community to suffer substantially, for such few instances. Hence I would humbly pronounce the measure to be nevertheless a wholesome one.

(4) I would respectfully suggest that for the word *family* in line 1 of clause (*b*) of section 3 of the Bill some other expression be substituted. For the words "such family" lower down in that clause are intended, I presume, to refer to the comprehensive "Hindu family" mentioned in paragraph 1 of section 3 and not to the wife and children of the solitary member who makes the acquisition, whereas, as the wording now stands, the expression "such family" in clause (*b*) would, I think, grammatically refer to "his family," *i.e.*, the limited household of that individual.

2. Craving leave to express my deep sense of the high honour done to me.

From M.R.Ry. K. SUBBA RAO PANTULU Garu, Deputy Collector, Pyápali Division, Kurnool District, to the Assistant Secretary to Government, Legislative Department, dated Pyápali, 26th September 1892, No. 969.

I beg to acknowledge, with thanks, the receipt of your letter No. 47, dated 31st ultimo, asking for an expression of my views on the Bill to declare gains of learning by a Hindu to be his separate property.

2. The Bill proposes to remove all uncertainty as to the extent of the right, which a member of a Hindu family has over property acquired by him by means of learning imparted to him by any member of the family or from family funds and to declare such property to be the exclusive and separate property of the acquirer. The Bill, if passed into law, shall apply to the Hindus and not to members of any other religion.

3. Before entering into the details of the Bill, I submit that this is a general question applicable to Hindus in all parts of India, and therefore the necessity or otherwise for the Bill is to be determined in the Imperial Legislative Council.

4. So far as my poor knowledge goes, I submit that the Hindu law is not in favour of the principles of the Bill.

5. Self-sacrifice is the motto of Hindu religion. Wordly wealth or fame has no weight in the eye of the Hindu law. The great sovereigns Balichakravarti, Shibi and others and venerable sages, such as Dadhíchi and others, as we read in Bhágavat, had tendered their bodies for the sake of others. To Hindus, who aim at both worldly and heavenly bliss, Shukráchárya expounds the law as follows:—

(8th Skhandam of Bhágavat) "Dharmáya, Yeshasé, Arthaya, Kámáya, Swajanáyácha, Panchadhá, Vibhajan, Vittamihamutracha Módate." He, who divides his gain into five parts, *i.e.*, first for charity, second for acquiring fame, third for reserve, fourth for personal enjoyment, and fifth for relatives, enjoys happiness both in this and the other world. These are the general principles of the law. The transgression of which is a religious offence.

6. Even setting aside these ancient or otherwise called orthodox laws and ignoring the religious offences, I submit the Honorable Mover of the Bill did not show, in my opinion, real necessity for the Bill.

7. On the other hand, I submit the Bill will work hard in the following cases:—For example, A has two sons—B and C. A spends nearly Rs. 5,000 for the learning of B, the eldest, and he is graduated. C, being considerably younger than B, A could not spend much for his education. A dies without property before C passing any examination. After the demise of A, when B, begins to gain by learning given to him by A from family funds, he is relieved, if the Bill becomes law of looking to the education of C. Likewise A, father, without getting his two or three daughters and one or two sons married, dies, spending his gain for the learning of his elder son, B. The latter is left scot-free by this Bill from maintaining and getting the minors married.

8. I am therefore of opinion that, so long as one chooses to live together in union, he must be prepared to divide the fruits of his education among his brothers as well as he too readily would share the fruits of their labours in open fields under scorching sun or in stormy weather. A Hindu family is, in all its features, a joint trading company where no objection on any principle is urged to the division among the members of the profits arising from the business of that company.

9. It is, after all, impossible to decide with any certainty the exact profits earned by each individual brother. It is not feasible to keep any accounts of the value of the work of each brother, for, what is of value in one sense is not in another. It may be that one brother earns a large fortune by pleadership acquired by learning, but a brother who remained illiterate and indolent at home happens to resist a band of dacoits entering the house and save thereby all the property which would but for his gallant conduct have all been carried away. Would it be rational to tell him at the eleventh hour that he had nothing to expect in the division of property, because his other brother had acquired it by learning and stored it in the house in his charge only to stand the risk of being murdered by the dacoits.

10. My contention is that, so long as persons live together, they must consent to divide the property among all of them in the same way and to the same extent as members of a joint mercantile firm, no matter whether the earnings are those of education, meritorious or gallant conduct, or the like. It is unnecessary to state that while one makes use of his head in acquiring money, another uses his body and runs the risk of all comfort and, it may be, even life at times. The remedy for an educated and successful member of a family who murmurs to divide his earnings among his own brothers or others similarly circumstanced is, in his own hands, to wit, to enforce division of the family property and to call for no special legislation to protect his interests.

From M.R.Ry. S. GOPALA CHARI, B.A., B.L., Subordinate Judge, Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Palamcottah, 26th September 1892.

In pursuance of the requisition contained in your letter No. 47, dated 31st ultimo, I have the pleasure to submit the following observations on the "Gains of Learning Bill" now before the Legislative Council:—

(1) That an evil loudly crying for redress exists cannot be doubted.

(2) That the remedy proposed is in the shape of a legal provision, which has been framed skilfully and couched in intelligible language without violating any undeniable or settled principle of law or recognized and binding custom, and which can be worked out in practice without friction or difficulty, cannot be gainsaid.

(3) That the results of the measure will be far-reaching and beneficial may safely be accepted or the exposition and expectations contained in paragraph 5 from the bottom of the "Statement of Objects and Reasons." The only matter on which a doubt can with any show of reason be suggested is as to whether the enactment will not deter the free advance of funds for the education of youths in certain conditions of the Hindu family. Where the father or grandfather of the boy is living, though he may have undivided uncles with or without male issue, no difficulty will arise. Where the father or grandfather is dead and there are no undivided uncles or cousins or other co-parceners, difficulties will be equally absent. But the only case in which any difficulty may arise is where the father or grandfather is dead and there are undivided uncle or uncles, cousin or cousins, constituting the joint family with this boy. Then it may be feared that the uncle or cousin will not, in the face of this unequivocal law, advance funds for the education of the boy, while there is no legal right to enforce a reimbursement of the advances or to claim a share in the after-acquisitions from the education so imparted. But it seems to me that as civilisation, enlightenment, liberalism and high example increase and permeate all classes, narrow prejudices and petty feelings would subside, and that good sense, a desire to maintain self-respect and secure the esteem of neighbours and relatives, and the prospect of elevation in the social scale, if not materially also, will prevail. Further, in such

rather a high figure for this country in my opinion. The father spends about Rs. 2,000 in giving one of the lads an University education, sets up a second in business, giving him a capital of Rs. 1,000, and makes the third lad look after the lands left, worth, we shall say, about Rs. 2,000. It is just possible that aided by their intelligence and industry and favoured by fortune, each may earn four or five thousand rupees in the course of ten years. The time for partition comes. The Bill under reference would give the English educated brother the whole of his own savings + $\frac{1}{3}$ of what is left of the original family property and $\frac{1}{3}$ of the savings of each of the other two brothers. This division, I beg to submit, will commend itself to none but the educated Hindu. It would certainly be fairer to treat his earnings, like the earnings of his trading and farming brothers, as part of the family property.

4. To take another case of constant occurrence. A father has three sons of varying ages, one 15 years, one 7 years and 2 years old, we shall suppose. He may spend Rs. 2,000 out of his total property of Rs. 3,000 on the education of the eldest son, hoping that, when he begins to earn, he will be able not only to maintain the family but educate his younger brothers: but, if the law clearly lays down that all his earnings are his separate property, he will feel no moral or legal obligation to support his parents in their old age or to give his younger brothers a suitable education. The father will have benefited one son at the expense of the others. When this danger is recognised by the thinking portion of the community, the practice of educating one member in the hope that not only he but the others will also be benefited by it, will cease, and seriously check the progress in education and wealth of middle-class families.

5. It may be said that the Bill places the educated and earning man in no better position than he would be in if he got himself divided from his family at the moment he began to earn; but would he think of so dividing himself? In most cases, not. In the first place love of parents, brothers and sisters has not had time to grow weak: himself and his young wife require the help of the family: his wife has not grown old enough to see that her interests suffer and has not acquired sufficient influence over him to make him quarrel with his parents and other relatives and brave the censure of his community by seeking partition: and, lastly, the savings are small at the commencement, and until they come up to a respectable sum, the love of money is weak. Things change in the course of about ten years, but by that time the man who has been educated at the cost of his family has benefited the others to some extent, and a partition will not then generally be to the injury of any one in particular.

6. The joint family system is a great blessing in a poor community. None but people intimately acquainted with Hindu families can know how it is possible for two or three brothers to live honorably and comfortably together on an income of Rs. 300 a year in a village, when it would be difficult for each man to live on Rs. 100. A joint family is often able to educate some of its younger members, carry on a respectable business and acquire and manage a large landed property, things which its members would not be able to do, if their interests were divided. Above all, the joint family keeps its members from begging. No hasty blow should, therefore, be aimed at it. The system has its drawbacks and evils: but for these the Hindu law provides a remedy. When the joint family style of living is no longer beneficial to a family or becomes distasteful to one or more of its members, they can either amicably, or, with the assistance of Courts of law, have their interests separated.

7. I would therefore condemn the Bill: first, because it strikes a blow at the joint family system which is on the whole beneficial in a poor community like ours; secondly, because it being conceded for argument's sake that the system is an injurious one, the Bill is an unjust measure, as it would only benefit a small fraction of the population, a section that is best able to take care of its interests, at the expense of the others; and, thirdly, because the measure would be unpopular with Hindus in general.

8. On the other hand a measure which would declare that all gains of learning of a member of a joint family are family property and that in suits for partition of property, the members who have been educated and married at the cost of the joint family or a member of such family should get shares less than those of members not so educated or married, by an amount equivalent to the cost of such education and such marriage, a measure like this would be both just and popular.

From M.R.Ry. P. PUNDARIKAKSHUDU PANTULU GARU, Deputy Collector, Vinukonda, to the Under Secretary to Government, Legislative Department, dated Vinukonda, 24th September 1892, No. 719.

In reply to your No. 47 of the 31st ultimo, enclosing copy of a Bill to declare gains of learning by a Hindu to be his separate property and calling for my views of the same *as briefly as possible*, I have the honour to state as follows.

2. As to the Hindu law on the subject as administered in our courts, there is little that I can add to what the learned Hon. V. Bhashyam Iyengar has said. As to the advisability or necessity of legally declaring that gains acquired by one by learning form his separate property, I was at first sight of the same opinion as the framer of the Bill, but I come to think that it is neither necessary nor advisable to legislate on the subject for reasons hereinafter given.

3. I consider it unnecessary to legislate that the gains of a person by learning shall not be divisible among his brothers or father, because it is open to that person at any moment to make a formal division of the family property; in other words, to become divided from the others of his family, so as to secure to himself all the gains of his learning. If he wishes that others of his family should not reap the benefit of his education, he must take steps at once to effect a division.

4. I think it inadvisable to legislate that gains of one's learning are his separate property; in other words, that they are not divisible among his brothers or others. It is an open secret that, as circumstances are in India, there is the general inclination among Hindus of educating their sons in English and of seeing them employed in the public or other respected service. They consequently bear the expenses of costly education. As my knowledge of the world proves, there is hardly a Hindu father now-a-days who hesitates to part even with his ancestral property by sale, mortgage or otherwise, for raising funds to educate his children. Suppose he has four sons the eldest, of course, comes in first for being the object of expenditure. In his desire to educate this son, the father spends all that he finds necessary, it may be at the sacrifice of the interests of his other sons. In educating his eldest son, he has no doubt a double object, viz., to make that son not only useful to himself, but also to his younger brothers. He does not see that these latter suffer because he feels sure that his eldest son has exactly the affection for his brothers as he himself has for them. His dealings, therefore, are honest, fair and desirable, according to himself, but it would be quite another thing when it is decided that a man's earnings by education imparted at the sacrifice of the interests of his brothers are not to be divided among all of them.

5. My remarks above given apply, *mutatis mutandis*, to the case of a brother who happens to be the managing member of the family. If costs of the education of the one or more of the brothers are met from the family funds, it seems undesirable to rule that the earnings of the educated should not be divided among the brothers whose shares of family property have been used up for the education which brought forth the earnings.

6. Again, take the case of a family consisting of two or more brothers, one of whom is a successful pleader of a bar and makes a large fortune. Suppose he has also paternal or other property in land, houses or money, he naturally employs his brothers in the cultivation or management of that property while he sets himself free for the duties of his profession as a pleader. I ask whether he ought to be allowed to enjoy in full the profits of his legal profession to the exclusion of his brothers and yet allowed to participate the fruits of all the labours of his brothers as though he has contributed his own labour as well as the others.

7. Again, take the case of a brother who goes away from his country for years to a place like Benares or Calcutta for receiving education in Sanscrit or English, and leaves his brother or brothers at home to maintain his family and children during that time very often by their own earnings. Would it be right for him to deny to his brother or brothers all participation of his subsequent earnings by his education? I certainly think not.

what appeared in the newspapers the measure seems to meet with general approval, and the opposition to it is but little, and that based upon an entire misapprehension of the existing state of the law and of the scope and effect of the Bill. This is specially the case with regard to certain criticism in the vernacular newspapers and one or two Anglo-Indian Journals. It is assumed erroneously that all acquisitions made by an undivided member of a Hindu family by means of education is under existing law joint family property, and the fact that a member of an undivided Hindu family who has received a high and scientific education at the expense of the family can, when he begins to earn by means of such education, become divided under such law, though it may be only by a suit when the other members resist or evade his proposal to become divided is entirely overlooked. One of the natural effects of the proposed measure must be to arrest the unnecessary breaking up of Hindu families and certainly not to break up such families as erroneously assumed sometimes. The absence therefore of anything like real opposition to the measure by means of memorials or otherwise is, I think, the strongest proof that the measure commends itself to the Hindu community in general. If there are not more memorials in support of the measure and more public meetings held in support thereof, I have reason to believe that it is due to the impression that is generally prevalent in this country that such steps in regard to legislative measures are necessary only when disapprobation has to be expressed.

The measure is of a character in which the Honorable the Judges of the High Court and other judicial officers of experience in the Presidency may, with advantage, be specially consulted and opinions may also be invited from several leading native gentlemen in the presidency. If this suggestion meets with approval and I am desired to suggest names of gentlemen to whom the Bill may be referred for opinion, I shall be happy to do so. Though I have carefully thought over the matter, I am unable to suggest any other practical mode of ascertaining public opinion on a larger scale, and, in my opinion, the Bill is not of a character which calls for a more extensive enquiry.

MYLAPORE,
20th May 1892.

(Signed) V. BHASHYAM IYENGAR,

Demi-official from M.R.Ry. RAMA VARMA RAJA, Avargal, Malabar, to the Under Secretary to Government, Legislative Department, dated Paraponad, 18th September 1892.

The Hon. Mr. Bhashyam Iyengar's "Bill to declare gains of learning by a Hindu to be his separate property" is intended to supply a long-and-much-felt want, I am not aware of opinions differing on the desirability of a legal declaration to remove all doubts as to the ownership over property acquired by one by means of learning.

From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Secretary to Government, Legislative Department, Ootacamund, dated Thoindiarpett, 19th September 1892.

I have the honour to acknowledge the receipt of your circular of the 31st ultimo, No. 47, with copy of a "Bill to declare gains of learning by a Hindu to be his separate property" and inviting my opinion thereon.

I have the honour to refer you to the memorial addressed to His Excellency the Governor in Council setting forth my opinion * and other members of the Hindu community on the draft Bill in question, and which was submitted to His Excellency the Governor and the members of Council, bearing date 21st September 1891. As the memorialists had maturely considered and submitted their opinion on the subject-matter in which I perfectly concurred and subscribed there is no necessity of my troubling you further with the same. However, to have the subject brought again to the consideration of Council, I transmit by book-post five copies of the said memorial for the information of the Council.

Demi-official from M.R.Ry. K. KRISTNASWAMY RAO, Avargal, Trivandrum, to the Secretary to Government, Legislative Department, Ootacamund, dated Trivandrum, 20th September 1892.

In reply to your letter No. 47, dated the 31st ultimo, calling for my views on the Bill to declare gains of learning by a Hindu to be his separate property, I beg to submit the following for the consideration of His Excellency the Governor in Council:—

* Printed at pages 3 to 5.

The present state of the law on the subject of the gains of learning is so unsettled in this Presidency that it is highly desirable that the Legislature should clearly define and declare it. The main objection to the Bill introduced by the Hon. V. Bhashyam Iyengar is that it does not exempt from the operation of the proposed law, the cases in which the acquisitions of a Hindu are distinctly traceable to the *special* education given to him at such a heavy cost to the family as would raise an irresistable presumption that when the expenditure was incurred, it was considered as an investment. It is nothing but reasonable that those who have materially contributed to the success of the acquirer should expect some substantial return from him. I am not unaware of the difficulty of enacting provisions which would satisfactorily meet every exceptional case. But I have strong reasons to believe that without some provision exempting the cases of this exceptional character from the operation of the proposed law, the Bill will not be acceptable to a great majority of the Hindu community.

From M.R.Ry. R. RAGOONATH ROW, Avargal, Madras, to the Secretary to Government, Legislative Department, Ootacamund, dated Mylapore, 23rd September 1892.

In acknowledging the receipt of your printed note of the 31st August 1892, No. 47, I beg to state that the provisions of the Bill "to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council, appear to me to be not contrary to the spirit of the Hindu law on the subject. I believe that, if they be enacted into law, it would render the administration of that department of the Hindu law uniform and certain and it would prove beneficial to the Hindus.

From M.R.Ry. C. NAGOJEE RAU PUNTULU GARU, B.A., Inspector of Schools, Northern Circle, to the Secretary to Government, Legislative Department, Ootacamund, dated Rajahmundry, 23rd September 1892.

As requested in your letter, No. 47, dated the 31st ultimo, I have the honour to submit my views on "a Bill to declare gains of learning by a Hindu to be his separate property" which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council.

2. The Bill proposes to lay down the law clearly on a point on which Hindu law books and the decisions of Courts are apparently divided. The point is.—Are the gains of learning of a Hindu, when he is a member of a joint family, to be treated as part of the family property or as the exclusive and separate property of the earner? The Bill proposes that they should be treated as separate property. If certainty of law were the only object in view, it would be equally well attained by declaring that all gains of learning are to be treated as family property. And this would, in my opinion, be in accordance not only with the Madras High Court decisions, but also in consonance with the feelings and sense of justice of the bulk of the Hindu population of this Presidency.

3. Until very recently English education, even University education, cost little or nothing, and the gains to a man who had received it were great, disproportionately so considering the cost of the education. So the feeling that the family which has contributed little or nothing towards fitting them up for their calling should have no right to their earnings has been widely prevalent among educated men, and it is this feeling which appeals to their self-interest, and which is backed up by moral indignation against the drones of their families, that has evidently induced the Hon. V. Bhashyam Iyengar to introduce his Bill into the Legislative Council. But we should look a little ahead. Circumstances are rapidly changing and education is becoming costly and the gains of learning much smaller than they have hitherto been. We should, therefore, consider how, in the altered circumstances, the proposed measure will affect the bulk of the Hindu families from which come the members who profit by learning. We may take as a type a family consisting of a father, a mother and three sons, with landed or other property of the aggregate value of five thousand rupees—

thereof. But in reference to particular points or topics of Hindu law out of which litigation mostly arises in consequence of the vagueness and uncertainty of the law applicable thereto, there can be no difficulty in settling them by an authoritative legislative declaration of such rules and adapting them as far as possible to the existing state of things. There is an immense waste of public time and judicial power in dealing with these vexed questions which in spite of previous decisions thereon constantly crop up in some shape or another. The measure now proposed is exactly one of this description, and such innovation as it introduces is no more than what is necessary to do away with a distinction between ordinary and scientific or extraordinary education, a distinction on which the law as now existing and enforceable is supposed to be founded.

In the Statement of Objects and Reasons appended to the Bill and in my introductory speech I have fully explained how impracticable and even fanciful it would be to decide in a particular case whether the education by means of which property was acquired by a Hindu was ordinary or scientific; and how problematical it will be to decide in the great majority of cases years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the measure is in the spirit of, and in conformity with, the Smriti or the original sacred law on the topic of gains of science.

Legislation will take a very beneficial direction if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of great practical importance and sometimes it may be to correct the effects of a judicial decision. Legislation in such direction will in no small degree check that class of speculative and gambling litigation which is now the result of uncertainty and vagueness in the law and which is often started in view to obtain certain concessions by a compromise.

One can hardly conceive that an additional native member of an Indian Legislative Council can render more appropriate or valuable services to his countrymen and to the Government than by initiating such measures with due regard to the feelings, sentiments and requirements of the native community or a considerable section thereof. Having regard to the fact that different schools of Hindu Law prevail in different provinces that the customs and habits of Hindus in different provinces are very divergent and dissimilar and that certain communities and provinces are more advanced than others, I am of opinion that, as a general rule, legislation in matters of Hindu law should take place in the respective local Legislative Councils and not in the Supreme Legislative Council.

At the commencement and for a considerable time legislation in matters of Hindu law can only be fragmentary, and such legislation is not without its advantages in that it will deal only with questions of practical importance pressing for legislative interference and deal with such points more thoroughly and carefully than in a general code of Hindu law.

This process of Legislation will eventually form a sound basis for a codification of the Hindu civil law, a task which can be appropriately undertaken only by the Supreme Legislative Council. A portion of such code will be of general application to the whole of British India and the remainder will have to deal with the local law specially applicable to different provinces. Until the civil law of Hindus is codified that law which concerns natives most and concerns them more than any of the several codes passed by the British Legislature will continue in a very unsatisfactory, if not chaotic, condition. The codification of that law will be the highest achievement by the British Indian Legislature and the greatest and everlasting benefit which it can confer upon the native community. If the Indian Legislature undertakes the task, I have no doubt that it will be accomplished in course of time, and when it is accomplished, the wonder will be not so much that it was at last done, but that it had to be delayed so long.

I am specially asked whether I can suggest any means other than those already adopted of ascertaining the views of the public on the proposed measure. There is always the greatest difficulty in ascertaining public opinion in this country on particular legislative and other measures affecting the general welfare of the native community.

In the first place the exact scope and object of a proposed measure is not understood except by a small section representing the enlightened and educated portion of the community, and as far as any public opinion exists in this country among the orthodox natives it can be ascertained only through the medium of leading natives who occupy a prominent position in the public service and in other walks of life. The measure in question, though one of great practical importance, is rather of a technical character, and but few people understand or can understand what the present state of the law is on the subject, especially as it is one of great vagueness and uncertainty.

The measure is not one which calls for the appointment of a commission for the purpose of ascertaining public opinion by taking evidence in the various districts. It really does not introduce such an innovation in Hindu families, law or usages as to call for such a step. The Bill with the Statement of Objects and Reasons and the introductory speech have now been before the public for upwards of a year, and if it was regarded as revolutionary of the existing state of things or otherwise objectionable or obnoxious, there would have been the strongest opposition to it from various quarters. As far as I have been able to judge both from memorials and from

2*ndly*—Because sons in Bengal acquire no right by birth even in ancestral property of the father and cannot claim as against the father partition of such property; and

3*rdly*—Because as pointed out in my introductory speech the Bengal commentators have dealt with this topic of Hindu law in a more liberal spirit than commentators of other schools.

As an instance of Legislation on a general point of Hindu Law by a local Legislature I may refer to Bombay Act VII of 1866 usually cited as the "Bombay Hindu Heirs Relief Act" and Act No. XII of 1873 amending the same.

The topic of Hindu law dealt with by that Act is essentially of a general character and more emphatically common to all systems of Hindu law than the topic of gains of science dealt with by the present Bill.

The other Bill relating to the succession of a Hindu sister and sister's son which I have not yet obtained leave to introduce is essentially of a local character and not one of general importance and interest throughout India.

I beg to take this opportunity of expressing briefly my views on the question as to the direction which, in my opinion, Legislation should take in the matter of Hindu law.

The Hindu law in itself is sufficiently elastic and admits of wide scope for its developement and advancement by the growth of customary law. The commentators of recognised authority also had considerable influence in moulding and modifying the Hidu law, though it must be confessed that in some instances the weight of their authority was brought to bear not in the direction of progress but the very reverse. Under the administration of justice by British Government owing to the existence, expansion and improvement of regularly constituted tribunals and the facilities which are afforded to its subjects of readily resorting to courts and employing skilled advocates to vindicate their rights, the moment they are infringed there can hardly be any scope for the growth of customary law which would correct and modify the old Hindu law except among the poorest and most backward classes and communities. As for commentators they cannot of course exist now having anything like the authority of the old commentators under former Native governments. The various judicial decisions on questions of Hindu law in the Indian Law Reports may be viewed in a certain sense as corresponding to such commentaries. But it must be borne in mind that Judges trained in the school of English law and judicial interpretation and anxious to interpret and administer native laws strictly and faithfully are far too judicial and conscientious to supply the place of the Hindu commentators of old who assumed far greater liberty and latitude in effectually advancing and moulding the Hindu law, though under the guise of commentating upon the original texts or smritis.

It is therefore I think the duty of the British Legislature to advance the Hindu law and adapt it to the conditions and sentiments of modern Hindu society without of course doing and violence to any of its fundamental or leading principles. If the British Legislature should withhold its helping hand, the Hindu law under the British Government will become crystallised and the growth of customary law arrested by the active force of the judicial tribunals. In other words so far as their substantive laws of inheritance and property are concerned natives would under British rule be decidedly in a less favorable situation than under native rule. It will not be out of place to refer here to the forcible and significant observation of Mr. Justice Muttusami Iyer in Venku *versus* Mahalinga [Indian Law Report, 11 Madras, pages 400 and 401] decided in 1888. "Is not therefore the cessation of the usage indicated by the Privy Council the sound basis for judiciary action, especially when there is a standing Legislative Council and when only very imperfect material is available to a Judge who is bound to decide according to evidence for ascertaining whether to any and what extent there has been a substantial change in the sentiments of the large mass of the Hindu community in regard to a particular usage of a section of the Hindus? . . . . Is it not also a sound rule of legislative policy that judiciary legislation of the earlier period should gradually retire within the narrow limits of judicial interpretation in proportion to the increased activity of direct legislation through organised bodies?"

Any one conversant with the Law Reports cannot fail to be struck with the fact that the mass of litigation arises out of Hindu family law and that owing to the obscurity of that law in not a few points of the gravest practical importance or to changes in Hindu society and the growth of new ideas and rights the Judges are considerably embarrassed in solving some of the questions which present themselves for judicial decision according to Hindu law. By way of illustration I may here quote the following extract from a judgment of Mr. Justice West who made Hindu law his special study: "It is to be regretted that we should have to deal with important civil rights by reference to principles which almost elude our grasp when we endeavour to give them a practical application, but we must in matters of inheritance administer to the Hindu community such a law, however, vague and nebulous as it has been, content to devise for itself or to accept from tradition" (*vide* Indian Law Report, 2 Bombay, p. 449). No doubt the task of modifying Hindu law and adapting it by legislation to the requirements and exigencies of modern Hindu society is a very difficult and delicate task and one which should be undertaken but gradually and with greatest caution. It will of course be not possible for many years to come to undertake the complete codification of the Hindu law or even a considerable branch

with his illiterate brothers who have earned nothing, and all this for the simple reason of his juvenile educational expenses having been incurred by the father; what is even worse is that at the time of suits for partition in the gains of the learned brother, even distant cousins and relatives, with a view to get a share in such hard-earned money, hover like birds of prey around the litigants, each employing a solicitor on his behalf, when the usurers of money, who eagerly watch for opportunities to invest their funds to the best advantage, lend large sums to the parties concerned at exorbitant rates of interest, as was done in the Tichborne suit so well known to all. Thus suits for partition are originated and strengthened, and after undergoing the usual preliminaries, they terminate after the lapse of some years; and if the decision of the Judge who hears the suit happens to be against the defendant, *i.e.*, the learned son, it is simply ruinous to his immediate heirs or sons, and the property thus becomes a source not of happiness but of misery to the family of its real acquirer. This is the inevitable fate of the generality of the partition suits brought in the Courts of Justice; and thus there is no certainty in the minds of the learned that their hard-earned gains would go to those most dear to them after their death. The last paragraph but 4 of the "Statement of Objects and Reasons" gives a clear and succinct view of the disabilities under which we labour in the present state of the law. We beg to solicit your Excellency's attention to the words that the rule as it at present stands "cannot but act prejudicially to the interest, advancement and the material prosperity of the country in which such a rule is or is supposed to be in operation"; and we would add that it does not at all tend to the moral progress of the community. The heart-burning jealousy and consequent mental agony to which the several members of the family, including the young and the old, are subjected during the progress of a suit for partition are beyond all description. It estranges the son from the father, and makes children of the same womb deadly enemies of each other, and all this owing to the absence of a simple law such as the one now proposed by the Hon. Bhashyam Iyengar. In support of our statement, we beg to cite here the opinion given by Sir Richard Couch, Chief Justice of Bombay, quoted at page 2 of the "Statement of Objects and Reasons." The learned Judge says: "A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court."

5. The hard-earned savings of the learned are now eagerly sought after by his relatives who do not choose to labour for their bread, evidently unmindful of the old adage "Thou shalt labour for thy bread in the sweat of thy brow." The prospect of such participation which the law now holds out has prevented many a promising youth from doing his best for himself and his children.

6. We beg to allude here to an instance in which one of the signatories to this, our humble memorial, was put to heavy losses in connection with a suit for participation brought by the son of his uncle against the latter's brother. This suit is referred to at page 52 of Part 9 of 1877, Madras Series of Indian Law Reports. It commenced in 1872 and terminated in 1877. The family in the meanwhile underwent much agony during its prolongation, and it taxed the estate under litigation to the extent of Rupees seventy thousand or thereabouts. It was ably defended by the late Mr. John Bruce Norton, Barrister-at-Law. He then expressed himself as follows:—"There remained only the question as to the effect of education. On this point the appellant's arguments proved too much; for, if as he contended, the effect of being educated made all the gains of an educated man joint, then no educated man could ever acquire anything for himself: as to the authorities cited, the texts of the Mitakshara were alone to have weight given to them. The Smriti Chandrika and Madhavya were not of the same authority." The nature of this suit is clearly given by the introducer of the Bill in his "Statement of Objects and Reasons" and in other memoranda on "Hindu Gains of Learning Bill," and we consider it needless to trouble your Excellency with any particulars thereof. The above is only one of many instances of this kind occurring in Hindu families, and in some of them both parties to the suit have been utterly ruined.

This is noted in the Indian Law Reports, Part 9 of 1877, August 1, page 256.

7. We need not add that many influential Journals here and in the other Presidencies have written strongly in favour of the Bill, and proved the necessity of passing it into law. And we beg to submit that your Excellency will be conferring a real boon on thousands of Hindu families by getting a law passed in terms of the Bill now laid before the Legislative Council; the measure will remove much of the present uncertainty, anxiety, and the consequent suffering in the minds of persons acquiring wealth by their own labour and of their heirs. We beg to add that the introducer of the Bill has very properly prayed for the omission of all technicalities and texts now observable in a Court of Justice in suits for partition, under the plea that the educational charge on account of the testator of a will was borne by the family and that he had therefore no right to dispose of his earnings as he chose. Mr. Bhashyam Iyengar's prayer for the enactment of a simple and uniform law, we most earnestly and warmly support; and we commend the measure in its entirety to your Lordship's consideration, with an humble but confident hope that the Bill will be passed into law at an early date.

8. We conclude our humble memorial with the expression of our belief that the passing of such an enactment, as the one now proposed, will mark a memorable era in the annals of the British administration and will tend in no small degree to the advancement of the material as well as the moral progress of India; and we are gratified to find that it falls to your Excellency to pass it and thus cause your name to be remembered with gratitude through the length and breadth of the land by thousands of families, for the peace and happiness which the law secures to them.

From the Hon. V. BHASHYAM IYANGAR, to the Assistant Secretary to Government, Legislative Department, dated Mylapore, 2nd May 1892.

I received your letter of the 1st of August last and a copy of the despatch which has been received from the Secretary of State in regard to the Hindu Gains of Learning Bill. As desired in your letter I send enclosed a note containing my views on the despatch generally and my suggestions as to the only practical mode of ascertaining the views of the public on the proposed measure.

Owing to the great pressure of professional work and to the fact that the matter was not emergent, I regret I was not able to reply to you earlier.

ENCLOSURE.

Note on the Hindu Gains of Learning Bill.

I may first dispose of the suggestion made in the concluding paragraph of the despatch from the Secretary of State "that the proposed measure involves the alteration of a law which the persons governed by it may regard as part of their religious code," and that in that view the sanction of the Governor-General will be necessary under section 43 of 24 and 25 Victoria, Chapter 67, before the Bill is introduced into and considered by the local Legislative Council. Clause 5 of the said section 43 is as follows:—"Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India."

The proposed measure which simply declares that all acquisitions made by a Hindu by means of his learning shall form his self-acquisition and thereby removes the existing uncertainty in the administration by Court of Justice of that portion of Hindu law which deals with acquisitions by means of learning does not seem to me in any way to affect either directly or indirectly the religion of any class of Her Majesty's subjects and much less the religious rites and usages of any such class.

It is difficult to see how the measure can be regarded as even remotely affecting the Hindu religion in any manner, even in cases where a proposed legislative measure does not in reality affect Hindu religion it is not uncommon that it is objected to by particular sections of that community on the favorite ground that it is an interference with their religion.

The strongest proof that the measure in question which it is obvious does not really affect the Hindu religion is not even regarded as such by any section of the Hindu community is afforded by the fact that no such objection has as yet been raised to the measure either in the newspapers or in any of the memorials, though the Bill has now been before the public for upwards of a year. I do not therefore think that the previous sanction of the Governor-General is necessary for the introduction of the Bill in the local Legislative Council. If such sanction is considered necessary for this Bill, almost every measure affecting Hindus which is introduced in the local Legislative Council will have to be regarded as affecting the religious rites and usages of Hindus.

As observed in the Despatch the proposed measure no doubt "relates to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India," and if the Governor-General should be in favour of its being introduced into the Supreme Legislative Council and applied to the whole of British India, it will of course be unnecessary now to introduce it in the local Council.

Whether the necessity for the proposed Bill exists or is felt to the same extent elsewhere as in the Presidency of Madras is a point on which I can express no opinion. The existing evil works the greatest hardship in the Marumakkatayam and Aliasantana systems of Hindu law obtaining on the West Coast which do not admit of an individual member becoming divided except with the concurrence of all the other members of the family. Under the Dayabhaga law of Bengal the evil could not be felt to the same extent as under the Mitakshara or the Benares school of Hindu Law for three reasons:—

1*stly*—Because under the Bengal school each member of an undivided family is the separate owner of a definite share in the family property and such share is at his absolute disposal and in the event of his dying intestate descends to his separate heirs;

aims at recognizing the rule obtaining in several civilized countries that the gains acquired by means of learning without reference to its nature or character from the separate property of the acquirer.

4. It is urged, however, in certain quarters that it is rather anomalous to place the gains of learning on a different footing from the gains made by any trade or other calling, seeing that in either case it is family fund that is made use of, and that the proposed legislation is likely to have a prejudicial effect upon the future education of junior members of Hindu families.

5. The association fails to see the force of these objections. In the first place, there are no points of similarity between the case of a member of a joint family receiving education at family expense and that of a member using family funds for other purposes. A member engaged in a trade for the benefit of the family pledges the family credit, rendering his co-parceners liable for losses incidental to the said business, and it is therefore but fair that the moneys earned out of such business should not be treated as the separate property of any single co-parcener who in such trade acts as the manager of the family. No such considerations apply to the case of a member earning by means of his learning, and the outlay on his education is generally looked upon as any other item of family expenditure for which one member of a family cannot call upon the other members for an account under the rules of the joint family system and in respect of which any return is seldom expected by the other members.

6. As the present law gives an unrestricted right to every member to separate himself from the joint family at any moment he chooses and make his acquisitions his exclusive property from that time forward, it is difficult to believe that the junior members are now being educated at the cost of the family funds with a motive on the part of the other members to lay claim to the future acquisitions of the members so educated. If the present law, as it is, has not stood in the way of education of such members, there is no reason to apprehend that the proposed modification of the law will produce any such effect.

7. A manager of a Hindu family provides for the education of the other members in proportion to his means out of a sense of duty, and the performance of this sacred duty will by no means be affected by the proposed measure. When we are aware that under the existing state of things, educated Hindus, as a rule, deem it a moral and religious duty to support and provide for the other members of the family who are less fortunate than themselves, even after their separation, there is no reason to fear that, if the present Bill should become law, they would all at once disregard such obligations and think of appropriating their earnings solely for themselves.

8. The association has therefore no hesitation in giving its cordial support to this measure in which the Hindu community is so deeply interested and prays that the same may be passed into law.

From the Acting Secretary, Berhampore Association and Reading Room, Berhampore, to the Assistant Secretary to Government, Legislative Department, dated 27th May 1891.

I have the honour to forward herewith, for the information of His Excellency the Governor in Council, the following resolution of the Berhampore Association and Reading Room passed at a meeting held on the 10th of April 1891 regarding "the Hindu Gains of Learning Bill" introduced into the Legislative Council by the Hon. V. Bashyam Iyengar, B.A. and B.L. :—

"The Association cordially approves of the principle as well as the details of the Bill and thanks the Honorable Mover for introducing a measure which without in any way clashing with the principles of the Hindu Law tends to remove a fruitful source of litigation and secures greater harmony in the domestic relations of a Hindu family. The association earnestly hopes that a measure so useful and necessary will meet with no frivolous opposition and will soon become law."

From C. V. NARASIAH, Esq., Barrister-at-law, President, Coimbatore Bar Association, to the Secretary to Government, Judicial Department, dated 25th July 1891.

I have the honour to forward herewith copy of a resolution passed by the Coimbatore Bar Association at a meeting held on the 17th July 1891 with regard to the Hindu Gains of Learning Bill now pending before the Legislative Council.

ENCLOSURE.

PROCEEDINGS of the Coimbatore Bar Association, dated 17th July 1891.

Resolved.—That the President be authorised to write to the Secretary of the Madras Legislative Council to the effect that, in the opinion of this association, the Hindu Gains of Learning Bill is an important legislative measure calculated to promote peace and harmony among members of Hindu families and to foster a spirit of individual enterprise and self-reliance, and that the association trusts that the Bill may soon be passed into law.

From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Assistant Secretary to Government, Legislative Department, dated Madras, 10th October 1891.

I have the honour to submit the accompanying memorial addressed to His Excellency the Governor in Council, Fort St. George, by the citizens of Madras on and in favour of the Bill "To declare Gains of learning by a Hindu to be his separate property" introduced into the Council by the Hon. V. Bhashyam Iyengar Avargal and solicit that the same may be laid before the consideration of the Members of the Council.

I have the honour to forward further ten copies of the said memorial for distribution amongst the members.

ENCLOSURE.

Petition from M.R.Ry. P. SOMOOSOONTHRUM CHETTY and others, to His Excellency the Governor in Council, dated Madras, 21st September 1891.

MAY IT PLEASE YOUR EXCELLENCY,—We, the undersigned inhabitants of Madras, beg leave to submit, for your Excellency's benign consideration, certain important facts of which we are aware and on which we base our humble opinion in support of the Bill "To declare Gains of learning by a Hindu to be his separate property," lately introduced into the Legislative Council by the Hon. V. Bhashyam Iyengar Avargal.

2 Your memorialists have perused with much interest and care the "Statement of Objects and Reasons" which accompanies the Bill as well as the Laws framed by our ancient Hindu Legislators, and the opinions of the several Courts of Justice in India and those of the Privy Council on the subject-matter in question.

3. We observe with concern that the authority of one Lawgiver is set aside by another, and that the various commentaries on the same text are conflicting, vague and doubtful, as very properly observed by the introducer of the Bill. On the authority of such texts, suits are daily filed by the members of undivided families for participation in the gains of learning or "Vydyadhanam" acquired by one or two members of the house; and these suits are decided by the several Courts of Justice with reference to the opinions formed by them according to their own acceptation of the Hindu Law. This is fully exemplified by the issue of the suit brought by Chalakonda Alasani against Chalakonda Ratnachalam (*vide* II Madras High Court Reports, page 56) in which two of the most distinguished Judges of the Madras High Court, namely, Mr. Justice Collett and Mr. Justice Holloway, arrived at opposite conclusions The former relied principally upon the texts of Manu and Yajnavalkya and the latter upon Mitakshara and on Katyayana's definition of "Vydyadhanam."

4. The law, as it now stands, affords no certainty of protection or safeguard to the educated men of the present day. There is no Act defining explicitly which kind of learning imparted by a father to a son, either at his own expense or at the expense of the family estate, makes the acquisitions of the latter partible or not partible. For instance, a father educates his eldest son up to a certain point at his own expense or that of the family estate; and the youth afterwards acquires sound learning according to modern standards by close application to his studies (for which he may have a special aptitude) with the aid of friends and by resorting to foreign lands at great personal hazard. The father spends money also on the education of his other sons, but these remain dull and illiterate, and the youth who secures a good education without the help of the father or of the family funds must needs part with his own gains and go shares

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following papers :—

From M.R.Ry. A. SANKARIAH, B.A., President Founder, Hindu Sabha, to the Chief Secretary to Government, dated Trichoor, 3rd March 1891.

I have the honour to submit the following observations on the Bill introduced by the Hon. V. Bhashyam Iyengar Avargal.

There is no doubt about the non-liability of acquisitions to partition against the acquirer's wish. But he is guided by moral, filial and fraternal affections, especially if the family has spent much and even contracted debts to enable him to succeed well in life. And often the son or brother so assisted improves the family house or adds to the family lands or discharges the family debts. It would be improper and impracticable for him to claim these back at any time.

I humbly think that the presumption should be in favour of the joint family system in respect of acquisitions which the gainer has not chosen to keep distinct under his own control.

The Hindu law of the partibility of the gains of learning applied mainly to *hereditary* professions endowed and patronised by society as the office of village priest or musician or dancing girl. In such cases the joint family should be upheld till division is effected or notice is given to co-parceners.

From M.R.Ry. T. SURYAPRAGASA RAO, B.A., Secretary, Literary Association, Cocanada, to the Assistant Secretary to Government, Legislative Department, dated Cocanada, 26th April 1891.

I have the honour to state that the provisions of the "Hindu Gains of Learning Bill" have been carefully considered by the members of the Literary Association, Cocanada, and that I am desired to submit the following observations with reference to the same for the consideration of His Excellency the President and the Honorable Members of the Council.

2. As pointed out by the Honorable Mover of the Bill, there is no doubt that the uncertainty of the present state of the law as regards the acquisitions made by a Hindu by means of learning has been productive of numerous evils disturbing the harmony of Hindu families and "has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so or to conceal acquisitions made by him or to invest them *benami*." Instances are not wanting where the *benamidars* take advantage of the situation and set up their own titles to properties acquired in their names. This uncertainty gives rise also to speculative and ruinous litigation.

3. The Bill under consideration, while introducing no innovation, simply does away with the distinction peculiar to Hindu Law between the gains acquired by special or scientific education and those made by general or elementary education and

Government {1897} of Madras

LEGISLATIVE.

Recd. } 1897. *Enclosures*

Regd. } *Spare copies*

G.O., No. 14, 16th February 1897.

FEBRUARY.

Hindu Gains of Learning Bill.

Passing orders on the subject of the introduction of the — into the Madras Legislative Council, and directing that the Government of India be addressed on the subject, and that a copy of the proceedings be forwarded to Her Majesty's Secretary of State for India.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—again the following papers :—

Despatch from the Right Honourable the Secretary of State for India, dated 25th June 1891, No. 2, Legislative.

Abstract.—Pointing out the desirability of ascertaining the views of the Hindu community at large on the provisions of the Hindu Gains of Learning Bill, and inquiring whether this Government had satisfied itself whether the sanction of His Excellency the Governor-General under section 43 (5) of XXIV and XXV Victoria, cap. 67, is not required for its introduction, into the Madras Legislative Council.

G.O., No. 47, Legislative, dated 31st August 1892.

Abstract.—Forwarding copies of the Hindu Gains of Learning Bill to certain Hindu gentlemen for favour of opinion.

G.O., No. 13, Legislative, dated 22nd February 1893.

Read—the following papers :—

From M.R.Ry. A. SANKARIAH, B.A., President-Founder, Hindu Sabha, to the Chief Secretary to Government, dated Trichoor, 3rd March 1891.

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There is no doubt about the non-liability of acquisitions to partition against the acquirer's wish. But he is guided by moral, filial and fraternal affections, especially if the family has spent much and even contracted debts to enable him to succeed well in life. And often the son or brother so assisted improves the family house or adds to the family lands or discharges the family debts. It would be improper and impracticable for him to claim these back at any time.

I humbly think that the presumption should be in favour of the joint family system in respect of acquisitions which the gainer has not chosen to keep distinct under his own control.

The Hindu law of the partibility of the gains of learning applied mainly to *hereditary* professions endowed and patronised by society as the office of village priest or musician or dancing girl. In such cases the joint family should be upheld till division is effected or notice is given to co-parceners.

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2. As pointed out by the Honourable Mover of the Bill, there is no doubt that the uncertainty of the present state of the law as regards the acquisitions made by a Hindu by means of learning has been productive of numerous evils disturbing the

harmony of Hindu families and "has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so or to conceal acquisitions made by him or to invest them *benami*." Instances are not wanting where the *benamidars* take advantage of the situation and set up their own titles to properties acquired in their names. This uncertainty gives rise also to speculative and ruinous litigation.

3. The Bill under consideration, while introducing no innovation, simply does away with the distinction peculiar to Hindu Law between the gains acquired by special or scientific education and those made by general or elementary education and aims at recognizing the rule obtaining in several civilized countries that the gains acquired by means of learning without reference to its nature or character from the separate property of the acquirer.

4. It is urged, however, in certain quarters that it is rather anomalous to place the gains of learning on a different footing from the gains made by any trade or other calling, seeing that in either case it is family fund that is made use of, and that the proposed legislation is likely to have a prejudicial effect upon the future education of junior members of Hindu families.

5. The association fails to see the force of these objections. In the first place, there are no points of similarity between the case of a member of a joint family receiving education at family expense and that of a member using family funds for other purposes. A member engaged in a trade for the benefit of the family pledges the family credit, rendering his co-parceners liable for losses incidental to the said business, and it is therefore but fair that the moneys earned out of such business should not be treated as the separate property of any single co-parcener who in such trade acts as the manager of the family. No such considerations apply to the case of a member earning by means of his learning, and the outlay on his education is generally looked upon as any other item of family expenditure for which one member of a family cannot call upon the other members for an account under the rules of the joint family system and in respect of which any return is seldom expected by the other members.

6. As the present law gives an unrestricted right to every member to separate himself from the joint family at any moment he chooses and make his acquisitions his exclusive property from that time forward, it is difficult to believe that the junior members are now being educated at the cost of the family funds with a motive on the part of the other members to lay claim to the future acquisitions of the members so educated. If the present law, as it is, has not stood in the way of education of such members, there is no reason to apprehend that the proposed modification of the law will produce any such effect.

7. A manager of a Hindu family provides for the education of the other members in proportion to his means out of a sense of duty, and the performance of this sacred duty will by no means be affected by the proposed measure. When we are aware that under the existing state of things, educated Hindus, as a rule, deem it a moral and religious duty to support and provide for the other members of the family who are less fortunate than themselves, even after their separation, there is no reason to fear that, if the present Bill should become law, they would all at once disregard such obligations and think of appropriating their earnings solely for themselves.

8. The association has therefore no hesitation in giving its cordial support to this measure in which the Hindu community is so deeply interested and prays that the same may be passed into law.

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"The Association cordially approves of the principle as well as the details of the Bill and thanks the Honourable Mover for introducing a measure which without in any way clashing with the principles of the Hindu Law tends to remove a fruitful source of litigation and secures greater harmony in the domestic relations of a Hindu family. The association earnestly hopes that a measure so useful and necessary will meet with no frivolous opposition and will soon become law."

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Enclosure.

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From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Assistant Secretary to Government, Legislative Department, dated Madras, 10th October 1891.

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I have the honour to forward further ten copies of the said memorial for distribution amongst the members.

Enclosure.

Petition from M.R.Ry. P. SOMOOSOONTHRUM CHETTY and others, to His Excellency the Governor in Council, dated Madras, 21st September 1891.

May it please your Excellency,—We, the undersigned inhabitants of Madras, beg leave to submit, for your Excellency's benign consideration, certain important facts of which we are aware and on which we base our humble opinion in support of the Bill "To declare Gains of learning by a Hindu to be his separate property," lately introduced into the Legislative Council by the Hon. V. Bhashyam Iyengar Avargal.

2. Your memorialists have perused with much interest and care the "Statement of Objects and Reasons" which accompanies the Bill as well as the Laws framed by our ancient Hindu Legislators, and the opinions of the several Courts of Justice in India and those of the Privy Council on the subject-matter in question.

3. We observe with concern that the authority of one Lawgiver is set aside by another, and that the various commentaries on the same text are conflicting, vague and doubtful, as very properly observed by the introducer of the Bill. On the authority of such texts, suits are daily filed by the members of undivided families for participation in the gains of learning or "Vydyadhanam" acquired by one or two members of the house; and these suits are decided by the several Courts of Justice with reference to the opinions formed by them according to their own acceptation of the Hindu Law. This is fully exemplified by the issue of the suit brought by Chalakonda Alasani against Chalakonda Ratnachalam (*vide* II Madras High Court Reports, page 56) in which two of the most distinguished Judges of the Madras High Court, namely, Mr. Justice Collett and Mr. Justice Holloway, arrived at opposite conclusions. The former relied principally upon the texts of Manu and Yajnavalkya and the latter upon Mitakshara and on Katyayana's definition of "Vydyadhanam."

4. The law, as it now stands, affords no certainty of protection or safeguard to the educated men of the present day. There is no Act defining explicitly which kind of learning imparted by a father to a son, either at his own expense or at the expense of the family estate, makes the acquisitions of the latter partible or not partible. For instance, a father educates his eldest son up to a certain point at his own expense or that of the family estate; and the youth afterwards acquires sound learning according to modern standards by close application to his studies (for which he may have a special aptitude) with the aid of friends and by resorting to foreign lands to great personal hazard. The father spends money also on the education of his other sons, but these remain dull and illiterate, and the youth who secures a good education without the help of the father or of the family funds must needs part with his own gains and go shares with his illiterate brothers who have earned nothing, and all this for the simple reason of his juvenile educational expenses having been incurred by the father; what is even worse is that at the time of suits for partition in the gains of the learned brother, even distant cousins and relatives, with a view to get a share in such hard-earned money, hover like birds of prey around the litigants, each employing a solicitor on his behalf, when the usurers of money, who eagerly watch for opportunities to invest their funds to the best advantage, lend large sums to the parties concerned at exorbitant rates of interest, as was done in the Tichborne suit so well known to all. Thus suits for partition are originated and strengthened, and after undergoing the usual preliminaries, they terminate after the lapse of some year; and if the decision of the Judge who hears the suit happens to be against the defendant, *i.e.*, the learned son, it is simply ruinous to his immediate heirs or sons, and the property thus becomes a source not of happiness but of misery to the family of its real acquirer. This is the inevitable fate of the generality of the partition suits brought in the Courts of Justice; and thus there is no certainty in the minds of the learned that their hard-earned gains would go to those most dear to them after their death. The last paragraph but 4 of the "Statement of Objects and Reasons" gives a clear and succinct view of the disabilities under which we labour in the present state of the law. We beg to solicit your Excellency's attention to the words that the rule as it at present stands "cannot but act prejudicially to the interest, advancement and the material prosperity of the country in which such a rule is or is supposed to be in operation"; and we would add that it does not at all tend to the moral progress of the community. The heart-burning jealousy and consequent mental agony to which the several members of the family, including the young and the old, are subjected during the progress of a suit for partition are beyond all description. It estranges the son from the father, and makes children of the same womb deadly enemies of each other, and all this owing to the absence of a simple law such as the one now proposed by the Hon. Bhashyam Iyengar. In support of our statement, we beg to cite here the opinion given by Sir Richard Couch, Chief Justice of Bombay, quoted at page 2 of the "Statement of Objects and Reasons." The learned Judge says: "A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court."

5. The hard-earned savings of the learned are now eagerly sought after by his relatives who do not choose to labour for their bread, evidently unmindful of the old adage "Thou shalt labour for thy bread in the sweat of thy brow." The prospect of such participation which the law now holds out has prevented many a promising youth from doing his best for himself and his children.

6. We beg to allude here to an instance in which one of the signatories to this, our humble memorial, was put to heavy losses in connection with a suit for participation brought by the son of his uncle against the latter's brother. This suit is referred to at page 52 of Part 9 of 1877, Madras Series of Indian Law Reports. It commenced in 1872 and terminated in 1877. The family in the meanwhile underwent much agony during its prolongation, and it taxed the estate under litigation to the extent of Rupees seventy thousand or thereabouts. It was ably defended by the late Mr. John Bruce Norton, Barrister-at-Law. He then expressed himself as follows:—There remained only the question as to the effect of education. On this point the appellant's arguments proved too much; for, if as he contended, the effect of being educated made all the gains of an educated man joint, then no educated man could ever acquire anything for himself: as to the authorities cited, the texts of the Mitakshara were alone to have weight given to them. The Smriti Chandrika and Madhavya were not of the same authority." The nature of this suit is clearly given by the introducer of the Bill in his "Statement of Objects and Reasons" and in other memoranda on "Hindu Gains of Learning Bill," and we consider it needless to trouble your Excellency with any particulars thereof. The above is only one of many instances of this kind occurring in Hindu families, and in some of them both parties the suit have been utterly ruined.

This is noted in the Indian Law Reports, Part 9 of 1877, August 1, page 256.

7. We need not add that many influential Journals here and in the other Presidencies have written strongly in favour of the Bill, and proved the necessity of passing it into law. And we beg to submit that your Excellency will be conferring a real boon on thousands of Hindu families by getting a law passed in terms of the Bill now laid before the Legislative Council; the measure will remove much of the present uncertainty, anxiety, and the consequent suffering in the minds of persons acquiring wealth by their own labour and of their heirs. We beg to add

that the introducer of the Bill as very properly prayed for the omission of all technicalities and texts now observable in a Court of Justice in suits for partition, under the plea that the educational charge on account of the testator of a will was borne by the family and that he had therefore no right to dispose of his earnings as he chose. Mr. Bhashyam Iyengar's prayer for the enactment of a simple and uniform law, we most earnestly and warmly support; and we commend the measure in its entirety to your Lordship's consideration, with an humble but confident hope that the Bill will be passed into law at an early date.

8. We conclude our humble memorial with the expression of our belief that the passing of such an enactment, as the one now proposed, will mark a memorable era in the annals of the British administration and will tend in no small degree to the advancement of the material as well as the moral progress of India; and we are gratified to find that it falls to your Excellency to pass it and thus cause your name to be remembered with gratitude through the length and breadth of the land by thousands of families, for the peace and happiness which the law secures to them.

From the Hon. V. BHASHYAM IYENGAR, to the Assistant Secretary to Government, Legislative Department, dated Mylapore, 2nd May 1892.

I received your letter of the 1st of August last and a copy of the despatch which has been received from the Secretary of State in regard to the Hindu Gains of Learning Bill. As desired in your letter I send enclosed a note containing my views on the despatch generally and my suggestions as to the only practical mode of ascertaining the views of the public on the proposed measure.

Owing to the great pressure of professional work and to the fact that the matter was not emergent, I regret I was not able to reply to you earlier.

Enclosure.

Note on the Hindu Gains of Learning Bill.

I may first dispose of the suggestion made in the concluding paragraph of the despatch from the Secretary of State "that the proposed measure involves the alteration of a law which the persons governed by it may regard as part of their religious code," and that in that view the sanction of the Governor-General will be necessary under section 43 of 24 and 25 Victoria, Chapter 67, before the Bill is introduced into and considered by the local Legislative Council. Clause 5 of the said section 43 is as follows:—"Affecting the religion or religious rites and usages of any class of Her Magesty's subjects in India."

The proposed measure which simply declares that all acquisitions made by a Hindu by means of his learning shall form his self-acquisition and thereby removes the existing uncertainty in the administration by Court of Justice of that portion of Hindu law which deals with acquisitions by means of learning does not seem to me in any way to effect either directly or indirectly the religion of any class of Her Majesty's subjects and much less the religious rites and usages of any such class.

It is difficult to see how the measure can be regarded as even remotely affecting the Hindu religion in any manner, even in cases where a proposed legislative measure does not in reality affect Hindu religion it is not uncommon that it is objected to by particular sections of that community on the favourite ground that it is an interference with their religion.

The strongest proof that the measure in question which it is obvious does not really affect the Hindu religion is not even regarded as such by any section of the Hindu community is afforded by the fact that no such objection has as yet been raised to the measure either in the newspapers or in any of the memorials, though the Bill has now been before the public for upwards of a year. I do not therefore think that the previous sanction of the Governor-General is necessary for the introduction of the Bill in the local Legislative Council. If such sanction is considered necessary for this Bill, almost every measure affecting Hindus which is introduced in the local Legislative Council will have to be regarded as affecting the religious rites and usages of Hindus.

As observed in the Despatch the proposed measure no doubt "relates to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India," and if the Governor-General should be in favour of its being introduced into the Supreme Legislative Council and applied to the whole of British India, it will of course be unnecessary now to introduce it in the local Council.

Whether the necessity for the proposed Bill exists or is felt to the same extent elsewhere as in the Presidency of Madras is a point on which I can express no opinion. The existing evil works the greatest hardship in the Marumakkatayam and Aliasantana systems of Hindu law obtaining on the West Coast which do not admit of an individual member becoming divided

except with the concurrence of all the other members of the family. Under the Dayabhaga law of Bengal the evil could not be felt to the same extent as under the Mitakshara or the Benares school of Hindu Law for three reasons:—

1*stly*—Because under the Bengal school each member of an undivided family is the separate owner of a definite share in the family property and such share is at his absolute disposal and in the event of his dying intestate descends to his separate heirs;

2*ndly*—Because sons in Bengal acquire no right by birth even in ancestral property of the father and cannot claim as against the father partition of such property; and

3*rdly*—Because as pointed out in my introductory speech the Bengal commentators have dealt with this topic of Hindu law in a more liberal spirit than commentators of other schools.

As an instance of Legislation on a general point of Hindu law by a local Legislature I may refer to Bombay Act VII of 1866 usually cited as the "Bombay Hindu Heirs Relief Act" and Act No. XII of 1873 amending the same.

The topic of Hindu law dealt with by that Act is essentially of a general character and more emphatically common to all systems of Hindu law than the topic of gains of science dealt with by the present Bill.

The other Bill relating to the succession of a Hindu sister and sister's son which I have not yet obtained leave to introduce is essentially of a local character and not one of general importance and interest throughout India.

I beg to take this opportunity of expressing briefly my views on the question as to the direction which, in my opinion, Legislation should take in the matter of Hindu law.

The Hindu law in itself is sufficiently elastic and admits of wide scope for its development and advancement by the growth of customary law. The commentators of recognised authority also had considerable influence in moulding and modifying the Hindu law, though it must be confessed that in some instances the weight of their authority was brought to bear not in the direction of progress but the very reverse. Under the administration of justice by British Government owing to the existence, expansion and improvement of regularly constituted tribunals and the facilities which are afforded to its subjects of readily resorting to courts and employing skilled advocates to vindicate their rights, the moment they are infringed there can hardly be any scope for the growth of customary law which would correct and modify the old Hindu law except among the poorest and most backward classes and communities. As for commentators they cannot of course exist now having anything like the authority of the old commentators under former Native governments. The various judicial decisions on questions of Hindu law in the Indian Law Reports may be viewed in a certain sense as corresponding to such commentaries. But it must be borne in mind that Judges trained in the school of English law and judicial interpretation and anxious to interpret and administer native laws strictly and faithfully are far too judicial and conscientious to supply the place of the Hindu commentators of old who assumed far greater liberty and latitude in effectually advancing and moulding the Hindu law, though under the guise of commentating upon the original texts or Smritis.

It is therefore I think the duty of the British Legislature to advance the Hindu law and adapt it to the conditions and sentiments of modern Hindu society without of course doing violence to any of its fundamental or leading principles. If the British Legislature should withhold its helping hand, the Hindu law under the British Government will become crystallised and the growth of customary law arrested by the active force of the judicial tribunals. In other words so far as their substantive laws of inheritance and property are concerned natives would under British rule be decidedly in a less favourable situation than under native rule. It will not be out of place to refer here to the forcible and significant observation of Mr. Justice Muttusami Iyer in Venku *versus* Mahalinga [Indian Law Report, 11 Madras, pages 400 and 401] decided in 1888. "Is not therefore the cessation of the usage indicated by the Privy Council the sound basis for judiciary action, especially when there is a standing Legislative Council and when only very imperfect material is available to a Judge who is bound to decide according to evidence for ascertaining whether to any and what extent there has been a substantial change in the sentiments of the large mass of the Hindu community in regard to a particular usage of a section of the Hindus? . . . . Is it not also a sound rule of legislative policy that judiciary legislation of the earlier period should gradually retire within the narrow limits of judicial interpretation in proportion to the increased activity of direct legislation through organised bodies?"

Any one conversant with the Law Reports cannot fail to be struck with the fact that the mass of litigation arises out of Hindu family law and that owing to the obscurity of that law in not a few points of the gravest practical importance or to changes in Hindu society and the growth of new ideas and rights the Judges are considerably embarrassed in solving some of the questions which present themselves for judicial decision according to Hindu law. By way of illustration I may here quote the following extract from a judgment of Mr. Justice West who made Hindu law his special study: "It is to be regretted that we should have to deal with important civil rights by reference to principles which almost elude our grasp when we endeavour to give them a practical application, but we must in matters of inheritance administer to the Hindu community such a law, however, vague and nebulous as it has been, content to devise for

itself or to accept from tradition" (*vide* Indian Law Report, 2 Bombay, p. 449). No doubt the task of modifying Hindu law and adapting it by legislation to the requirements and exigencies of modern Hindu society is a very difficult and delicate task and one which should be undertaken but gradually and with greatest caution. It will of course be not possible for many years to come to undertake the complete codification of the Hindu law or even a considerable branch thereof. But in reference to particular points or topics of Hindu law out of which litigation mostly arises in consequence of the vagueness and uncertainty of the law applicable thereto, there can be no difficulty in setting them by an authoritative legislative declaration of such rules and adapting them as far as possible to the existing state of things. There is an immense waste of public time and judicial power in dealing with these vexed questions which in spite of previous decisions thereon constantly crop up in some shape or another. The measure now proposed is exactly one of this description, and such innovation as it introduces is no more than what is necessary to do away with a distinction between ordinary and scientific or extraordinary education, a distinction on which the law as now existing and enforceable is supposed to be founded.

In the Statement of Objects and Reasons appended to the Bill and in my introductory speech, I have fully explained how impracticable and even fanciful it would be to decide in a particular case whether the education by means of which property was acquired by a Hindu was ordinary or scientific; and how problematical it will be to decide in the great majority of cases years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the measure is in the spirit of, and in conformity with, the Smriti or the original sacred law on the topic of gains of science.

Legislation will take a very beneficial direction if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of great practical importance and sometimes it may be to correct the effects of a judicial decision. Legislation in such direction will in no small degree check that class of speculative and gambling litigation which is now the result of uncertainty and vagueness in the law and which is often started in view to obtain certain concessions by a compromise.

One can hardly conceive that an additional native member of an Indian Legislative Council can render more appropriate or valuable services to his countrymen and to the Government than by initiating such measures with due regard to the feelings, sentiments and requirements of the native community or a considerable section thereof. Having regard to the fact that different schools of Hindu law prevail in different provinces that the customs and habits of Hindus in different provinces are very divergent and dissimilar and that certain communities and provinces are more advanced than others, I am of opinion that, as a general rule, legislation in matters of Hindu law should take place in the respective local Legislative Councils and not in the Supreme Legislative Council.

At the commencement and for a considerable time legislation in matters of Hindu law can only be fragmentary, and such legislation is not without its advantages in that it will deal only with questions of practical importance pressing for legislative interference and deal with such points more thoroughly and carefully than in a general code of Hindu law.

This process of Legislation will eventually form a sound basis for a codification of the Hindu civil law, a task which can be appropriately undertaken only by the Supereme Legislative Council. A portion of such code will be of general application to the whole of British India and the remainder will have to deal with the local law specially applicable to different provinces. Until the civil law of Hindus is codified that law which concerns natives most and concerns them more than any of the several codes passed by the British Legislature will continue in a very unsatisfactory, if not chaotic, condition. The codification of that law will be the highest achievement by the British Indian Legislature and the greatest and everlasting benefit which it can confer upon the native community. If the Indian Legislature undertakes the task, I have no doubt that it will be accomplished in course of time, and when it is accomplished, the wonder will be not so much that it was at last done, but that it had to be delayed so long.

I am specially asked whether I can suggest any means other than those already adopted of ascertaining the views of the public on the proposed measure. There is always the greatest difficulty in ascertaining public opinion in this country on particular legislative and other measures affecting the general welfare of the native community.

In the first place the exact scope and object of a proposed measure is not understood except by a small section representing the enlightened and educated portion of the community, and as far as any public opinion exists in this country among the orthodox natives it can be ascertained only through the medium of leading natives who occupy a prominent position in the public service and in other walks of life. The measure in question, though one of great practical importance, is rather of a technical character, and but few people understand or can understand what the present state of the law is on the subject, especially as it is one of great vagueness and uncertainty.

The measure is not one which calls for the appointment of a commission for the purpose of ascertaining public opinion by taking evidence in the various districts. It really does not introduce such an innovation in Hindu families, law or usages as to call for such a step. The Bill with the Statement of Objects and Reasons and the introductory speech have now been before the public for upwards of a year, and if it was regarded as revolutionary of the existing state of things or otherwise objectionable or obnoxious, there would have been the strongest opposition to it from various quarters. As far as I have been able to judge both from memorials and from what appeared in the newspapers the measure seems to meet with general approval, and the opposition to it is but little, and that based upon an entire misapprehension of the existing state of the law and of the scope and effect of the Bill. This is specially the case with regard to certain criticism in the vernacular newspapers and one or two Anglo-Indian Journals. It is assumed erroneously that all acquisitions made by an undivided member of a Hindu family by means of education is under existing law joint family property, and the fact that a member of an undivided Hindu family who has received a high and scientific education at the expense of the family can, when he begins to earn by means of such education, become divided under such law, though it may be only by a suit when the other members resist or evade his proposal to become divided is entirely overlooked. One of the natural effects of the proposed measure must be to arrest the unnecessary breaking up of Hindu families and certainly not to break up such families as erroneously assumed sometimes. The absence therefore of anything like real opposition to the measure by means of memorials or otherwise is, I think, the strongest proof that the measure commends itself to the Hindu community in general. If there are not more memorials in support of the measure and more public meetings held in support thereof, I have reason to believe that it is due to the impression that is generally prevalent in this country that such steps in regard to legislative measures are necessary only when disapprobation has to be expressed.

The measure is of a character in which the Honourable the Judges of the High Court and other judicial officers of experience in the Presidency may, with advantage, be specially consulted and opinions may also be invited from several leading native gentlemen in the presidency. If this suggestion meets with approval and I am desired to suggest names of gentlemen to whom the Bill may be referred for opinion, I shall be happy to do so. Though I have carefully thought over the matter, I am unable to suggest any other practical mode of ascertaining public opinion on a large scale, and, in my opinion, the Bill is not of a character which calls for a more extensive enquiry.

(Signed) V. BHASHYAM IYENGAR,

Mylapore,
20th May 1892.

Demi-official from M.R.Ry. RAMA VARMA RAJA, Avargal, Malabar, to the Under Secretary to Government, Legislative Department, dated Paraponad, 18th September 1892.

The Hon. Mr. Bhashyam Iyengar's "Bill to declare gains of learning by a Hindu to be his separate property" is intended to supply a long-and-much-felt want, I am not aware of opinions differing on the desirability of a legal declaration to remove all doubts as to the ownership over property acquired by one by means of learning.

From M.R.Ry. P. SOMOOSOONTHRUM CHETTY, to the Secretary to Government, Legislative Department, Ootacamund, dated Thoindiarpett, 19th September 1892.

I have the honour to acknowledge the receipt of your circular of the 31st ultimo, No. 47, with copy of a "Bill to declare gains of learning by a Hindu to be his separate property" and inviting my opinion thereon.

I have the honour to refer you to the memorial addressed to His Excellency the Governor in Council setting forth my opinion* and other members of the Hindu community on the draft Bill in question, and which was submitted to His Excellency the Governor and the members of Council, bearing date 21st September 1891. As the memorialists had maturely considered and submitted their opinion on the subject-matter in which I perfectly concurred and subscribed there is no necessity of my troubling you further with the same. However, to have the subject brought again to the consideration of Council, I transmit by book-post five copies of the said memorial for the information of the Council.

* Printed at pages 3 to 5.

Demi-official from M.R.Ry. K. KRISTNASWAMY RAO, Avargal, Trivandrum, to the Secretary to Government, Legislative Department, Ootacamund, dated Trivandrum, 20th September 1892.

In reply to your letter No. 47, dated the 31st ultimo, calling for my views on the Bill to declare gains of learning by a Hindu to be his separate property, I beg to submit the following for the consideration of His Excellency the Governor in Council:—

The present state of the law on the subject of the gains of learning is so unsettled in this Presidency that it is highly desirable that the Legislature should clearly define and declare it. The main objection to the Bill introduced by the Hon. V. Bhashyam Iyengar is that it does not exempt from the operation of the proposed law, the cases in which the acquisitions of a Hindu are distinctly traceable to the *special* education given to him at such a heavy cost to the family as would raise an irresistable presumption that when the expenditure was incurred, it was considered as an investment. It is nothing but reasonable that those who have materially contributed to the success of the acquirer should expect some substantial return from him. I am not unaware of the difficulty of enacting provisions which would satisfactorily meet every exceptional case. But I have strong reasons to believe that without some provision exempting the cases of this exceptional character from the operation of the proposed law, the Bill will not be acceptable to a great majority of the Hindu community.

From M.R.Ry. R. RAGOONATH ROW, Avargal, Madras, to the Secretary to Government, Legislative Department, Ootacamund, dated Mylapore, 23rd September 1892.

In acknowledging the receipt of your printed note of the 31st August 1892, No. 47, I beg to state that the provisions of the Bill "to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council, appear to me to be not contrary to the spirit of the Hindu law on the subject. I believe that, if they be enacted into law, it would render the administration of that department of the Hindu law uniform and certain and it would prove beneficial to the Hindus.

From M.R.Ry. C. NAGOJEE RAU PANTULU GARU, B.A., Inspector of Schools, Northern Circle, to the Secretary to Government, Legislative Department, Ootacamund, dated Rajahmundry, 23rd September 1892.

As requested in your letter No. 47, dated the 31st ultimo, I have the honour to submit my views on "a Bill to declare gains of learning by a Hindu to be his separate property" which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council.

2. The Bill proposes to lay down the law clearly on a point on which Hindu law books and the decisions of Courts are apparently divided. The point is.—Are the gains of learning of a Hindu, when he is a member of a joint family, to be treated as part of the family property or as the exclusive and separate property of the earner? The Bill proposes that they should be treated as separate property. If certainty of law were the only object in view, it would be equally well attained by declaring that all gains of learning are to be treated as family property. And this would, in my opinion, be in accordance not only with the Madras High Court decisions, but also in consonance with the feelings and sense of justice of the bulk of the Hindu population of this Presidency.

3. Until very recently English education, even University education, cost little or nothing, and the gains to a man who had received it were great, disproportionately so considering the cost of the education. So the feeling that the family which has contributed little or nothing towards fitting them up for their calling should have no right to their earnings has been widely prevalent among educated men, and it is this

feeling which appeals to their self-interest, and which is backed up by moral indignation against the drones of their families, that has evidently induced the Hon. V. Bhashyam Iyengar to introduce his Bill into the Legislative Council. But we should look a little ahead. Circumstances are rapidly changing and education is becoming costly and the gains of learning much smaller than they have hitherto been. We should, therefore, consider how, in the altered circumstances, the proposed measure will affect the bulk of the Hindu families from which come the members who profit by learning. We may take as a type a family consisting of a father, a mother and three sons, with landed or other property of the aggregate value of five thousand rupees—rather a high figure for this country in my opinion. The father spends about Rs. 2,000 in giving one of the lads an University education, sets up a second in business, giving him a capital of Rs. 1,000, and makes the third lad look after the lands left, worth, we shall say, about Rs. 2,000. It is just possible that aided by their intelligence and industry and favoured by fortune, each may earn four or five thousand rupees in the course of ten years. The time for partition comes. The Bill under reference would give the English educated brother the whole of his own savings + $\frac{1}{3}$ of what is left of the original family property and $\frac{1}{3}$ of the savings of each of the other two brothers. This division, I beg to submit, will commend itself to none but the educated Hindu. It would certainly be fairer to treat his earnings, like the earnings of his trading and farming brothers, as part of the family property.

4. To take another case of constant occurrence. A father has three sons of varying ages, one 15 years, one 7 years and 2 years old, we shall suppose. He may spend Rs. 2,000 out of his total property of Rs. 3,000 on the education of the eldest son, hoping that, when he begins to earn, he will be able not only to maintain the family but educate his younger brothers: but, if the law clearly lays down that all his earnings are his separate property, he will feel no moral or legal obligation to support his parents in their old age or to give his younger brothers a suitable education. The father will have benefited one son at the expense of the others. When this danger is recognised by the thinking portion of the community, the practice of educating one member in the hope that not only he but the others will also be benefited by it, will cease, and seriously check the progress in education and wealth of middle-class families.

5. It may be said that the Bill places the educated and earning man in no better position than he would be in if he got himself divided from his family at the moment he began to earn; but would he think of so dividing himself? In most cases, not. In the first place love of parents, brothers and sisters has not had time to grow weak: himself and his young wife require the help of the family: his wife has not grown old enough to see that her interests suffer and has not acquired sufficient influence over him to make him quarrel with his parents and other relatives and brave the censure of his community by seeking partition: and, lastly, the savings are small at the commencement, and until they come up to a respectable sum, the love of money is weak. Things change in the course of about ten years, but by that time the man who has been educated at the cost of his family has benefited the others to some extent, and a partition will not then generally be to the injury of any one in particular.

6. The joint family system is a great blessing in a poor community. None but people intimately acquainted with Hindu families can know how it is possible for two or three brothers to live honorably and comfortably together on an income of Rs. 300 a year in a village, when it would be difficult for each man to live on Rs. 100. A joint family is often able to educate some of its younger members, carry on a respectable business and acquire and manage a large landed property, things which its members would not be able to do, if their interests were divided. Above all, the joint family keeps its members from begging. No hasty blow should, therefore, be aimed at it. The system has its drawbacks and evils: but for these the Hindu law provides a remedy. When the joint family style of living is no longer beneficial to a family or becomes distasteful to one or more of its members, they can either amicably, or, with the assistance of Courts of law, have their interests separated.

7. I would therefore condemn the Bill: first, because it strikes a blow at the joint family system which is on the whole beneficial in a poor community like ours; secondly, because it being conceded for argument's sake that the system is an injurious one,

the Bill is an unjust measure, as it would only benefit a small fraction of the population, a section that is best able to take care of its interests, at the expense of the others; and, thirdly, because the measure would be unpopular with Hindus in general.

8. On the other hand a measure which would declare that all gains of learning of a member of a joint family are family property and that in suits for partition of property, the members who have been educated and married at the cost of the joint family or a member of such family should get shares less than those of members not so educated or married, by an amount equivalent to the cost of such education and such marriage, a measure like this would be both just and popular.

From M.R.Ry. P. PUNDARIKAKSHUDU PANTULU GARU, Deputy Collector, Vinukonda, to the Under Secretary to Government, Legislative Department, dated Vinukonda, 24th September 1892, No. 719.

In reply to your No. 47 of the 31st ultimo, enclosing copy of a Bill to declare gains of learning by a Hindu to be his separate property and calling for my views of the same *as briefly as possible*, I have the honour to state as follows.

2. As to the Hindu law on the subject as administered in our courts, there is little that I can add to what the learned Hon. V. Bhashyam Iyengar has said. As to the advisability or necessity of legally declaring that gains acquired by one by learning form his separate property, I was at first sight of the same opinion as the framer of the Bill, but I come to think that it is neither necessary nor advisable to legislate on the subject for reasons hereinafter given.

3. I consider it unnecessary to legislate that the gains of a person by learning shall not be divisible among his brothers or father, because it is open to that person at any moment to make a formal division of the family property; in other words, to become divided from the others of his family, so as to secure to himself all the gains of his learning. If he wishes that others of his family should not reap the benefit of his education, he must take steps at once to effect a division.

4. I think it inadvisable to legislate that gains of one's learning are his separate property; in other words, that they are not divisible among his brothers or others. It is an open secret that, as circumstances are in India, there is the general inclination among Hindus of educating their sons in English and of seeing them employed in the public or other respected service. They consequently bear the expenses of costly education. As my knowledge of the world proves, there is hardly a Hindu father now-a-days who hesitates to part even with his ancestral property by sale, mortgage or otherwise, for raising funds to educate his children. Suppose he has four sons the eldest, of course, comes in first for being the object of expenditure. In his desire to educate this son, the father spends all that he finds necessary, it may be at the sacrifice of the interests of his other sons. In educating his eldest son, he has no doubt a double object, viz., to make that son not only useful to himself, but also to his younger brothers. He does not see that these latter suffer because he feels sure that his eldest son has exactly the affection for his brothers as he himself has for them. His dealings, therefore, are honest, fair and desirable, according to himself, but it would be quite another thing when it is decided that a man's earnings by education imparted at the sacrifice of the interests of his brothers are not to be divided among all of them.

5. My remarks above given apply, *mutatis mutandis*, to the case of a brother who happens to be the managing member of the family. If costs of the education of the one or more of the brothers are met from the family funds, it seems undesirable to rule that the earnings of the educated should not be divided among the brothers whose shares of family property have been used up for the education which brought forth the earnings.

6. Again, take the case of a family consisting of two or more brothers, one of whom is a successful pleader of a bar and makes a large fortune. Suppose he has also paternal or other property in land, houses or money, he naturally employs his brothers in the cultivation or management of that property while he sets himself free for the duties of his profession as a pleader. I ask whether he ought to be allowed

to enjoy in full the profits of his legal profession to the exclusion of his brothers and yet allowed to participate the fruits of all the labours of his brothers as though he has contributed his own labour as well as the others.

7. Again, take the case of a brother who goes away from his country for years to a place like Benares or Calcutta for receiving education in Sanskrit or English, and leaves his brother or brothers at home to maintain his family and children during that time very often by their own earnings. Would it be right for him to deny to his brother or brothers all participation of his subsequent earnings by his education? I certainly think not.

8. I am therefore of opinion that, so long as one chooses to live together in union, he must be prepared to divide the fruits of his education among his brothers as well as he too readily would share the fruits of their labours in open fields under scorching sun or in stormy weather. A Hindu family is, in all its features, a joint trading company where no objection on any principle is urged to the division among the members of the profits arising from the business of that company.

9. It is, after all, impossible to decide with any certainty the exact profits earned by each individual brother. It is not feasible to keep any accounts of the value of the work of each brother, for, what is of value in one sense is not in another. It may be that one brother earns a large fortune by pleadership acquired by learning, but a brother who remained illiterate and indolent at home happens to resist a band of dacoits entering the house and save thereby all the property which would but for his gallant conduct have all been carried away. Would it be rational to tell him at the eleventh hour that he had nothing to expect in the division of property, because his other brother had acquired it by learning and stored it in the house in his charge only to stand the risk of being murdered by the dacoits.

10. My contention is that, so long as persons live together, they must consent to divide the property among all of them in the same way and to the same extent as members of a joint mercantile firm, no matter whether the earnings are those of education, meritorious or gallant conduct, or the like. It is unnecessary to state that while one makes use of his head in acquiring money, another uses his body and runs the risk of all comfort and, it may be, even life at times. The remedy for an educated and successful member of a family who murmurs to divide his earnings among his own brothers or others similarly circumstanced is, in his own hands, to wit, to enforce division of the family property and to call for no special legislation to protect his interests.

From M.R.Ry. S. GOPALA CHARI, B.A., B.L., Subordinate Judge, Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Palamcottah, 26th September 1892.

In pursuance of the requisition contained in your letter No. 47, dated 31st ultimo, I have the pleasure to submit the following observations on the "Gains of Learning Bill" now before the Legislative Council:—

(1) That an evil loudly crying for redress exists cannot be doubted.

(2) That the remedy proposed is in the shape of a legal provision, which has been framed skilfully and couched in intelligible language without violating any undeniable or settled principle of law or recognized and binding custom, and which can be worked out in practice without friction or difficulty, cannot be gainsaid.

(3) That the results of the measure will be far-reaching and beneficial may safely be accepted or the exposition and expectations contained in paragraph 5 from the bottom of the "Statement of Objects and Reasons." The only matter on which a doubt can with any show of reason be suggested is as to whether the enactment will not deter the free advance of funds for the education of youths in certain conditions of the Hindu family. Where the father or grandfather of the boy is living, though he may have undivided uncles with or without male issue, no difficulty will arise. Where the father or grandfather is dead and there are no undivided uncles or cousins or other co-parceners, difficulties will be equally absent. But the only case in which any difficulty may arise is where the father or grandfather is dead and there are

undivided uncle or uncles, cousin or cousins, constituting the joint family with this boy. Then it may be feared that the uncle or cousin will not, in the face of this unequivocal law, advance funds for the education of the boy, while there is no legal right to enforce a reimbursement of the advances or to claim a share in the after-acquisitions from the education so imparted. But it seems to me that as civilisation, enlightenment, liberalism and high example increase and permeate all classes, narrow prejudices and petty feelings would subside, and that good sense, a desire to maintain self-respect and secure the esteem of neighbours and relatives, and the prospect of elevation in the social scale, if not materially also, will prevail. Further, in such rare cases of default or apathy, and they will be only rare, a disruption of the family and a partition demanded by the boy or his relatives will result which can be the only immediate consequence, but the facilities and freedom of the boy in the matter of his education will be enhanced and society is not likely to fare worse, nor the community to suffer substantially, for such few instances. Hence I would humbly pronounce the measure to be nevertheless a wholesome one.

(4) I would respectfully suggest that for the word *family* in line 1 of clause (*b*) of section 3 of the Bill some other expression be substituted. For the words "such family" lower down in that clause are intended, I presume, to refer to the comprehensive "Hindu family" mentioned in paragraph 1 of section 3 and not to the wife and children of the solitary member who makes the acquisition, whereas, as the wording now stands, the expression "such family" in clause (*b*) would, I think, grammatically refer to "his family," *i.e.*, the limited household of that individual.

2. Craving leave to express my deep sense of the high honour done to me.

From M.R.Ry. K. SUBBA RAO PANTULU Garu, Deputy Collector, Pyápali Division, Kurnool District, to the Assistant Secretary to Government, Legislative Department, dated Pyápali, 26th September 1892, No. 969.

I beg to acknowledge, with thanks, the receipt of your letter No. 47, dated 31st ultimo, asking for an expression of my views on the Bill to declare gains of learning by a Hindu to be his separate property.

2. The Bill proposes to remove all uncertainty as to the extent of the right, which a member of a Hindu family has over property acquired by him by means of learning imparted to him by any member of the family or from family funds and to declare such property to be the exclusive and separate property of the acquirer. The Bill, if passed into law, shall apply to the Hindus and not to members of any other religion.

3. Before entering into the details of the Bill, I submit that this is a general question applicable to Hindus in all parts of India, and therefore the necessity or otherwise for the Bill is to be determined in the Imperial Legislative Council.

4. So far as my poor knowledge goes, I submit that the Hindu law is not in favour of the principles of the Bill.

5. Self-sacrifice is the motto of Hindu religion. Worldly wealth or fame has no weight in the eye of the Hindu law. The great sovereigns Balichakravarti, Shibi and others and venerable sages, such as Dadhíchi and others, as we read in Bhágavat, had tendered their bodies for the sake of others. To Hindus, who aim at both worldly and heavenly bliss, Shukráchárya expounds the law as follows:—

(8th Skhandam of Bhágavat) "Dharmáya, Yeshasé, Arthâya, Kámáya, Swajanáyacha, Panchadhá, Vibhajan, Vittamihamutracha Módate." He, who divides his gain into five parts, *i.e.*, first for charity, second for acquiring fame, third for reserve, fourth for personal enjoyment, and fifth for relatives, enjoys happiness both in this and the other world. These are the general principles of the law, the transgression of which is a religious offence.

6. Even setting aside these ancient or otherwise called orthodox laws and ignoring the religious offences, I submit the Honorable Mover of the Bill did not show, in my opinion, real necessity for the Bill.

7. On the other hand, I submit the Bill will work hard in the following cases:—For example, A has two sons—B and C. A spends nearly Rs. 5,000 for the learning of B, the eldest, and he is graduated. C, being considerably younger than B, A could not spend much for his education. A dies without property before C passing any examination. After the demise of A, when B, begins to gain by learning given to him by A from family funds, he is relieved, if the Bill becomes law of looking to the education of C. Likewise A, father, without getting his two or three daughters and one or two sons married, dies, spending his gain for the learning of his elder son, B. The latter is left scot-free by this Bill from maintaining and getting the minors married.

8. As a rule, a Hindu father spends more money for the education of his elder son, or the brighter son, to relieve him and his relatives in his advanced age or after his death. The Bill acts injuriously upon the well-being of such families. Numerous instances of the kind may be cited. All these difficulties are met by the Hindu law as it stands.

9. It seems to be unwise that Government should create new rights not expressly sanctioned by the Hindu shastras in favour of a small section of the Hindus who gain by learning. The term Hindu is understood to mean any person who follows that religion, and if the rules of that religion would not sanction the provisions of the present Bill, I doubt whether he can call himself a Hindu when he takes the benefit of the new legislation. It is unjust on the face of it to say that the earnings of a member by learning imparted from family funds are not divisible. A Hindu is, as long as his means permit, bound under the law of his religion to provide for himself, his wife, his children, his parents, his brothers, his sisters, his uncles, his cousins, his maternal uncles, brothers-in-law, besides distant relations, house priests, learned and pious men, blind, cripple and helpless of both sexes, and so on. It is in consideration of this binding, the relations and dependants are required to observe pollution at the death of a Hindu, the period of pollution varying according to the degree of relationship.

10. A conservative Hindu who desires to secure his gains of learning for himself has the remedy in his own hands under the existing national law instead of seeking for State interference by means of legislation. Sir Richard Couch, Chief Justice of Bombay, very rightly observed: "There may be hard cases and the remedy is in the hands of the parties themselves, *i.e.*, to divide under the existing laws." A member can claim division as soon as he sees that he may earn better singly than jointly. If he adopts this course, there will be no occasion for litigation, and the member seeking the division shall have full rights over his earnings. It seems a retrograde step for the State to legislate in this matter and create a title in favour of the ablest men. Practically among Hindus poor relations look to rising men in wealth for support. Where a man earns by his learning, his sympathies are mostly with his relations and dependants and he helps them in the shape of meals, cloths, monthly stipends or presents.

11. Suits for partition cannot be highly ruinous except in cases where two brothers earn more than the other members of the family and each of them contends that he earned more than the other. Such cases must, of course, be left for the Law Courts to decide upon the merits of each suit.

12. As a rule, State should be neutral in matters such as these where the question of one's rights under the law of their religion is involved. The proposed measure will gradually reduce to poverty many persons who have been dependent as of right upon their well-to-do relations. Parents are bound by the laws of every civilised nation to protect their children and train them for any of the walks of life, and it is certainly an admitted fact that the son has a duty to perform towards his parents and protect them in their old age. When the parents die, the son has, among Hindus, to perform the funerals and annual ceremonies. It is plain that birth itself is sufficient to make one responsible for the interests of the other members of the same family.

13. I submit that learning alone is not sufficient to acquire a large fortune. Inheritance does not follow learning. Birth carries with it inheritance. I ask whether or not the property acquired by inheritance is divisible. The Hindu law

as it now stands meets all such cases according to the nature of the position of a Raja, Zemindar, Matadlupati or other persons whose property is sought to be divided. In the same way the Law Courts alone should, I think, decide what liberal and equitable share should be allowed to the acquirer out of the gains of learning. For instance, the members of a joined Stock Company cannot arbitrarily be denied all profits accruing from the increased skill and labour of one of them, though perhaps it is just that the latter should be remunerated more than others. It seems to me therefore unnecessary that a Bill should be passed for the exclusive benefit of persons who by a mere stroke of fortune, I may say, acquire gains by some learning, profession or otherwise. All disputes of the kind are generally most amicably settled, with perhaps a few exceptions, without resorting to Law Courts. I have known instances where persons have relinquished their right altogether to family property in consideration of their being able to support themselves by other means and of their brothers not being so successful as themselves. Some have even gone further by recouping family funds which bore the expenses of their thread marriage and other ceremonies. On the whole, I submit, it does not seem to be in accord with the principles of the Hindu religion to say that gains of learning is not divisible.

14. If, however, the preponderance of opinion is in favour of the Bill, I would propose, for the consideration of His Excellency the Governor in Council, that a moiety of the gains of learning be declared divisible.

From M.R.Ry. T. VENKASAMI ROW, to the Under Secretary to Government, Legislative Department, dated Mylapore, 30th September 1892.

In reply to your letter of the 31st August 1892, No. 47, I beg to state that an enactment as proposed by the Hon. V. Bhashiyam Iyengar, "to declare gains of learning by a Hindu to be his separate property," seems to me desirable.

2. The exhaustive enunciation of objects and reasons annexed to the Bill leaves very little to be said as to the uncertainty which exists with regard to the state of law on a subject of so much importance and the desirability of removing it in the interests of domestic peace and prosperity.

3. I do not think the Bill can be said to overrule a distinct rule of Hindu law, seeing that the law is involved in so much doubt. Indeed, it seems questionable whether at the present day the earnings of a Hindu can be regarded as "Gains of science," which the law-givers intended should in the case of an undivided member educated at the expense of the family be divisible. So far as it is possible to deduce the intention of Smriti writers from more recent judicial interpretations they seem to have recognised a distinction between gains of ordinary or general education and those of which a special training for a particular profession is the direct source. The former they considered impartible on the presumption apparently that the share of each co-parcener in the family property must cover such education of a general character as he receives, and it is to the latter that they restricted the principle of partibility. But in thus excepting property acquired by special learning from the general rule applicable to self-acquired property, they apparently had in view special learning limited to a small number who owe their earnings solely to it. They could scarcely have contemplated a condition of society, such as the present, in which higher education is so widely spread that it does not alone enable a man to earn more than a decent livelihood, and when one's career in life proves more successful, he owes it chiefly to his natural abilities and industry.

4. It does not clearly appear that either the authors or commentators of Hindu law draw a line between *ordinary* and *extraordinary* gains of learning, but the practical application of any such distinction is out of the question.

5. On the whole it seems to me that the proposed Bill, while it is suggested by the dictates of natural justice, can scarcely be considerd to be repugnant to the spirit of Hindu law.

From K. C. MANAVEDAN RAJAH, Esq., C.S., to the Under Secretary to Government, Legislative Department, dated Chingleput, 30th September 1892.

I have to acknowledge with thanks the receipts of the Hon. Mr. Bhashyam Iyengar's Bill with copy of the objects and reasons, and to state that I fully approve of the provisions of the Bill and the reasons advanced in favour of it by the honorable gentleman.

It is a measure most eagerly wished for by all classes of educated Hindus, and I can conceive of no possible objection to it on reasonable grounds.

One may however be anticipated and that from Malabar. It may and probably will be said that the direct result of the Bill if it becomes law will be that all educated people will dispose of their gains of learning in favour of their wives and children; that it will not, as is now the case, be absorbed in tarward property; that in this case the tarward property would no longer prosper; and that the head of the tarward will not care for the education of the members, which in course of time will come to be neglected. I do not attach any value to the objection. As a rule most of the property is even now given away to wives and children in the lifetime of the owner. This is generally recognized to be an underhand dealing, however necessary and beneficial it may be, and it is extremely desirable to legalize it.

With regard to the education of the junior members of a family, the responsibility of the head of the tarward is only theoretical. The practice which I may call almost universal is for the son to be maintained by his father and educated at his expense. I say almost universal, because I cannot remember with one exception any family educating the junior members thereof at its sole expense. I need not name the exceptional case, but all the same the exception proves the rule. In my opinion this measure will have no prejudicial influence on the education of the members of a Malabar tarward. On the other hand the benefits likely to be derived therefrom are incalculable.

From M.R.Ry. Dewan Bahadur S. SRINIVASARAGHAVA IYENGAR Avergal, to the Under Secretary to Government, Legislative Department, dated Ootacamund, 1st October 1892.

Adverting to your circular letter of the 31st August last, No. 47, asking for my views on the Bill "to declare Gains of Learning by a Hindu to be his separate property," which the Hon. V. Bhashiyam Iyengar has obtained permission to introduce in the local Legislative Council, I beg to submit the following remarks.

2. I understand the state of the law on the subject which the Bill in question deals with to be as follows—

(*a*) It is a recognized principle of the modern Hindu law that the self-acquired property of a member of a joint Hindu family is ordinarily the sole property of the acquirer and is not liable to partition among the other members of the family except with his consent.

(*b*) To the above rule the Hindu law recognizes an exception in the case of gains of science, in the acquisition of which family funds had been expended. In the application of the principle thus laid down in general terms, there is the greatest diversity of practice both among the text writers of the different schools of Hindu law and among the several High Courts of Judicature.

(*c*) The Madras High Court in a case decided in 1864 (and which forms the leading case on the subject) has laid down that "the gains or, at all events, the ordinary gains of learning and science which have been taught at the expense of the family funds are not impartible."

(*d*) The scope and precise signification of almost every word in the proposition above referred to is the subject of dispute. The ruling of the High Court leaves it in doubt whether it is to be considered as applicable to "extraordinary" gains of learning; and, if it is not, there is the difficulty of distinguishing between "ordinary" and

"extraordinary" gains; secondly, there is the difficulty of determining whether by "learning or science" is meant knowledge acquired by means of a general education which it is the duty of every family to impart to its members according to the standard in force in the community to which it belongs, or special technical knowledge and proficiency; and thirdly there is the difficulty in determining what amount of assistance from the family funds shall be considered sufficient to render the "gains of learning or science" partible, that is to say, whether the fact of the person to whom the knowledge is imparted is maintained out of family funds is sufficient, or whether the family should have made special and unusual sacrifices in view to his acquiring the learning or science.

(*e*) The Madras High Court in a subsequent case decided in 1872, where the question was as to whether the earnings of a vakil were partible or not, decided the question in the affirmative, Mr. J. Holloway, who was one of the Judges, remarking that "the ordinary gains of science by one who has received a family maintenance are certainly partible," and that, within the meaning of the authorities, a vakil's business is no matter of science. It is somewhat difficult to reconcile the premises with the conclusion arrived at, but, for the remarks of Mr. J. Kindersley, it appears that the decision was that the acquisitions of a member of a joint family, who was maintained out of family funds while receiving a *general education*, were partible. In another case (not reported in the authorized reports), however, where a Hindu had made a large mercantile fortune, his claim to hold it as self-acquired was allowed, though he had admittedly been maintained in his earlier years, educated and married out of patrimonial means. In another case, which went up before the Privy Council, they remarked that the proposition that if "a member of a joint Hindu family receives any education whatever from the joint funds he becomes for ever after incapable of acquiring by his own skill and industry any separate property" was a "startling" one. It was, however, unnecessary to decide the point in the case then before the Privy Council, but they intimated that it might be necessary to consider hereafter the correctness of the doctrine laid down by the Madras High Court in the two earlier cases above referred to.

(*f*) In these circumstances it is impossible to say what the law on the subject is in this Presidency, and the rapid advance of education, coupled with the uncertainty in the law on a vital point like the one under consideration, has been a fruitful source of family dissensions. In Bengal, the rule laid down is that acquisitions by a member of a joint family are partible only in case the funds of the family are directly made use for the purposes of the acquisition. In Bombay, on the other hand, the High Court has adopted a middle course and ruled that, to make the gains of learning partible, the education imparted at the family expense must be special and not a general one.

3. The object of the present Bill I take to be to declare authoritatively the law on the subject so as to avoid dissensions and litigation it gives rise to. The position taken up by the Madras High Court in its earlier decisions is, as pointed out by the Privy Council, so untenable and opposed to modern tendencies that it is unnecessary to consider it. The choice lies between adopting the rule in force in Bengal and that laid down by the Bombay High Court, and it seems to me that the Bill rightly adopts the former, and that, though there is an appearance of fairness in the Bombay rule, its application in practice will lead to endless difficulties and consequent litigation for the following reasons: First, the standard of education has been constantly shifting and of late years rapidly rising. I myself know that 30 years ago it would have involved a special sacrifice, owing to want of facilities for education, to educate a youth up to the standard of the Matriculation examination of the University; now education up to the B.A. standard is looked upon among the higher classes quite as a matter of course and not a special investment for the benefit of the family; and in a few years more education up to the B.L. standard will be regarded in the same light as a call to the bar is among the upper classes in England. Secondly, the standard of education differs in the several classes of society; what is special education for the poorest classes will be nothing more than ordinary education for the upper classes. Thirdly, so long as there is no means to compel a member of a family who has received

a special education either to earn or to save the Bombay rule must place a premium on idleness or extravagance. For instance, A and B are educated for the bar. A fails to qualify himself, but becomes a merchant. B qualifies and practises as a barrister. A's earnings would not be partible, but B's would be, though family funds had been equally expended in giving a special education to both of them. Again, if B accepted employment as a clerk in a public office, his earnings would not be partible according to the Bombay decisions; but if he rose to the position of a Judge, they would probably be partible. Neither A nor B could be called upon by the other members of the family to account for their earnings, and even if the family had any power to do so it would be altogether ineffectual, seeing that, owing to extension of facilities of communications, the earning members of families are now in many cases dispersed all over the Presidency and not confined, as in former times, to the immediate neighbourhood of their villages. Further, the rule that what is saved shall be liable to partition is tantamount to placing a premium on extravagance or concealment of property and leads to demoralization. Fourthly, the Bengal rule furnishes an intelligible and easily applied criterion for determining what shall be considered family property and what self-acquired property by declaring that, to make the earnings of a member fall within the former category, family funds should have been directly employed in their acquisition.

4. I fully approve, therefore, of the provisions of the Bill and beg strongly to urge on Government the necessity for passing it as early as possible. The settlement of the law by means of legislation will prevent much heartburning and dispute among the members of the family which the present state of the law gives rise to. What generally happens in Hindu families is this: so long as the earning member lives there is seldom any trouble; the other members look to him for protection and know that, if they put any pressure on him, it is open to him to separate himself from the family and thus cut off their supplies. When he separates himself of his own accord he generally makes, out of his self-acquisitions, provision for the other members to the extent of his means, though he does not feel bound to consider his cousins, nephews and other distant relations as being on the same footing as his own children whose interests have naturally the first claim on him. It is when he dies leaving a widow, more or less helpless, and young children, more especially girls, that the troubles commence leading to much fraud and waste of property. The proposed legislation will effectually put a stop to these evils and be of great benefit to the country.

5. There is one other question to be considered, namely, would the proposed legislation restrict the application of family funds to the special education of some of its members more than the present law does. I do not think that the application of family funds would be appreciably affected, more especially when it is remembered that it is open to a member of a family, after receiving a special education, to separate himself from the family, and that the law entirely leaves it to his sense of moral obligation to continue in the family and be of service to the other members in return to the benefits received by him. On the contrary, it seems to me that the proposed legislation would promote harmony and mutual good will among the several members and prevent the breaking up of joint families as long as it is convenient for them to live together. Often a member of a family who earns a large income may, out of regard for his parents and affection for his brothers and sisters, like to continue in the family and provide for their comfortable subsistence out of his earnings, provided he is not obliged to throw the whole of such earnings into the common fund, thereby beggaring his own children. When the choice is presented to him either of separating himself entirely from the family or of giving up all his self-acquisitions, it is not difficult to see what his decision would be and how detrimental that a law of this kind must in the long run be to the interests of the non-earning members of the family.

6. Lastly, I beg to state that no religious question whatever is involved in the proposed legislation and that there need be no misgivings on this score.

From M.R.Ry. D. V. RAMAYYA PANTULU, Government Pleader, Ganjám, to the Under Secretary to Government, Legislative Department, dated Berhampore, 1st October 1892.

With reference to your letter No. 47, dated the 31st August last, forwarding to me a copy of the Hindu Gains of Learning Bill and its annexure and asking for my views thereon, I have the honour to state as follows:—

When the Bill was introduced into the Council in 1891, the Honourable Mover having sent to me a copy of the same, I studied it carefully and expressed my views in favour of the measure.

I have again studied it now, and it has confirmed my opinion in its favour.

My experience as a pleader during the last 22 years has convinced me of the great nicety and subtilty of the questions which arise in connection with this topic of Hindu law and of the necessity of a measure of this kind for the preservation of the peace and happiness of many a Hindu family.

The Bill is in consonance with the views of several of the text-writers on Hindu law, it is not at variance with the spirit of the judicial expositions of the law, and it is quite in accord with the present condition of Hindu society.

It is not open to the charges that are sometimes made against Bills of this kind, viz., that it is prospective legislation, that it is uncalled for, that it is opposed to the religious principles or feelings of the people, that it is a revolutionary measure, &c.

I wish and hope that the measure will soon become law and will be followed by similar simple measures on several other vexed questions of Hindu law whose glorious uncertainty is proverbial.

From M.R Ry. C. SURY AIYAR, Subordinate Judge of Cocanada, to the Under Secretary to Government, Legislative Department, dated Cocanada, 1st October 1892, No. 444-A.

I have the honour to submit herewith my opinion on the "Bill to declare Gains of Learning by a Hindu to be his separate property" as requested in your letter No. 47, dated 31st August 1892.

Enclosure.

Opinion on the Hindu Gains of Learning Bill.

1. The Bill deals with an important branch of the Hindu law. As observed by the Honourable Mover of the Bill, the law upon the subject is not free from uncertainty.

2. The system of the Hindu law which is administered by the Civil Courts is to be gathered from the books written many centuries ago in a language and phraseology that are unknown except to a select few. Judges in the Mofussil generally depend upon translations which are in most cases found to be incomplete and not sufficiently lucid, and it affords them much relief to find a decision of the High Court on any points in controversy.

3. The authorities on the Hindu law are numerous and the annotations of the commentators and the opinions of the different text-writers sometimes make matters complex. For instance, in the Smriti Chandrika (section 1, chapter VII, Kristnaswamy Iyer Translation, 2nd edition), which is a work of special authority in this Presidency, the quotation from Vyasa, that wealth gained by science belongs to him that acquired it and shall not be claimed by the co-heirs, is followed by several rules laid down by Katyayana and others which so affect and contrast the plain meaning of Vyasa's rule of law as to leave the matter in ambiguity and uncertainty. Judges are often at a loss to decide upon the comparative efficacy as regards the views of different text-writers.

4. The decisions of the High Court, or rather the rules and principles recognized in them, are now mainly looked upon as the embodiment of the Hindu law. But in some instances it so happens that they are relaxed or modified in order to meet the justice of the varying cases that the courts had to deal with. Want of uniformity of decisions or the modification of an earlier interpretation of a rule of law has often been complained of.

In this state of case-law, it is not too much to say that any attempt to reduce any branch of the Hindu law to a degree of certainty deserves every encouragement.

5. That the legislature had already experimented upon legislating on certain topics of the Hindu law, when justice required such a course, may be seen from Act XXI of 1850 (Loss of Caste or change of Religion), Act XXV of 1856 (Widow Marriage) and other enactments.

6. Sir H. Cunningham, the late Advocate-General of this Presidency, had by the publication of his Digest of the Hindu Law, as administered here, demonstrated to some extent the possibility of codifying the same, and it can hardly be denied that the codification of the law confers a boon upon the community. The present Bill may serve us a step in that direction.

7. The principle and the scope of the Bill do no violence to the Hindu notions of property and are consonant to the spirit of the modern times. I do not doubt the wisdom of preserving to the people their own laws in matters of inheritance, adoption, marriage and religion. But modern education and modern culture are daily modifying the views of even the most orthodox Hindus on all these important questions. And a change proposed by the Bill will be really in accordance with the law laid down in the oldest Hindu law books.

8. Since the publication of the decision of the Privy Council in Pauliem *v.* Pauliem (Indian Law Report I, Mad., 252) the tendency of the judicial mind as to the self-acquired character of the gains of learning has been towards adopting the more liberal and certainly the more reasonable interpretation of the Bombay High Court in preference to the extreme view reiterated by Justice Holloway in D. Gangadharadu *v.* D. Narasanna (7 M.H.C.R., 47). Even in this latter case Kindersley, J., observed that there is a natural inclination in favour of such an interpretation of the law as would secure the fruits of a man's professional earnings for his own branch of the family.

9. The Bill proposes to put the gains of special or scientific learning on the same footing as those of ordinary education. This is going a step further than what has been recognized by the Bombay High Court, but the reasons assigned are cogent and satisfactory. And the benefits that are likely to accrue by the passing of the Bill into law are not overrated therein. The fairness of the proposed measure cannot reasonably be disputed by any section of the Hindu community. Nor does it tend to disturb any vested rights of property, because, however liberal an education a member might have received at the expense and to the detriment of the family property, there is nothing to prevent him from effecting a division the moment he begins to acquire the fruits of his learning and thus deprive his co-parceners of any share therein.

10. Though the Hindu law favours partition, the average Hindu will not generally adopt the processes necessary to effect a complete partition for reasons too numerous to be detailed here, but will be tempted to resort to the *benami* and other devices in order to secure the fruits of his learning to his branch of the family, which eventually result in ruinous litigation.

11. The remedies of the personal creditors of a member of a joint Hindu family are now more difficult and attended with grater risks than they were hitherto supposed to be. In Venkatarama *v.* Meera Lebai (Indian Law Report 13, Mad., 275) a Division Bench of the Madras High Court held that a purchaser from a member of an undivided family of that member's share in a specific portion of the family property cannot sue for partition of that portion alone and obtain an allotment to himself, but must seek partition of the whole family property; and a Full Bench of the same Court has recently held (Indian Law Report 14, Mad., 408) that the share to be awarded to him should be computed with referenee to the state of the joint family *at the date of the suit*.

12. A statutory declaration to the effect that the gains of education of a member of the family are his exclusive property will considerably raise his credit and status in public estimation and will in the long run tend to stimulate the exertions of the other members of the family. And it will also calculate to put an end to unseemly family quarrels and remove the extreme uncertainty in the present state of the law with regard to acquisitions made by a Hindu by means of his learning.

13. It will tend to foster independence and to develop individual resources and it will promote harmony and mutual goodwill among the members.

14. On the whole I am in favour of the Bill in question and I do not find any weighty objection to it.

From M.R.Ry. C. VENKOBACHARIAR, Subordinate Judge, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 15th October 1892, No. 1025.

In reply to your communication No. 47, dated 31st August 1892, I beg to state that I see no urgent necessity for the proposed legislation. It does not appear from the papers that I have been able to read on the subject that any representation was made to His Excellency's Council invoking interference by legislature. The supposed uncertainty in the law as to "gains of learning" is not peculiar to that branch of Hindu law. There are many other points both of Hindu law and other branches

of law and jurisprudence which may not be set to have been free from uncertainty. In my humble opinion the proposed Bill may, as a part of the general law codifying the Hindu law, which codification, if it at all takes place under the auspices of legislature, may be a desirable measure in a modified form for general legislation. But at present the great uncertainty spoken to by the Honourable Mover of the Bill is not such as, in my opinion, to call for legislative interference.

2. The Smritis in the way in which they have been written clearly lay down the law on this point, though with slight variations here and there. It is in the interpretation of the texts that difficulty has been felt, and it may be said that it has not been unanimous. But so far as it has received attention at the hands of Judges, it seems to have been pretty clearly settled what acquisitions are those which the acquirer can claim exclusively to himself, and what he cannot. Viewed in this light also there seems to be no necessity for legislation on this point at present.

3. The Bill may possibly affect, or, when passed into law, may be given effect to by a few persons who might wish to avail themselves of its provisions. But what is aimed at by the Bill is likely, in my opinion, to introduce changes in a Hindu family which might produce serious and unpleasant results. Apart from those cases in which fathers and brothers of refined culture and feeling, who might educate their sons and brothers from disinterested motives and from a sense of duty, there are many instances in which poor fathers encumber their little property for educating their sons in the hope of bettering the condition of the family. What is to be the lot of the father, whose son discards him on the strength of the proposed Bill as soon as he begins to earn money? No doubt the father was bound to impart elementary education, but he was not bound to spend his little fortune in bringing up his son. Each man may have his own views as to what elementary education is. If mere rudiments are taught, such as are taught in a pial school, they may cost very little or nothing. Now the cost of education has greatly increased and the education up to B.A. is, I understand, ordinarily known as general education. I am told that it costs at the lowest a1,000 rupees to educate up to the B.A. degree. If this is so, it is fair to suppose that, when a member of a family incurs any outlay in imparting education to a junior member anything more than indigenous education, he expected to be reimbursed by the member who is benefited by that education. I may quote the very apt instance of a member being sent to England for studying for the Civil Service or the Bar, given by Mr. Mayne in his Hindu Law, 4th edition, paragraph 259.

4. Take the following case as an illustration. In a family of four brothers, of whom three were given good English education at the family cost and one a rudimentary education, and he being left in charge of family estates consisting of, say, 250 or 300 acres of lands, wet and dry. Suppose the three educated brothers were employed in different places in different walks of life, each earning some handsome emoluments. These brothers can claim their acquisitions exclusively to themselves and also a share in the acquisitions made by the brother in charge of family estate by his own skill and industry. The measure will tend, I apprehend, to this result, namely, that there will be no incentive to give tolerably good education to junior members so as to fit them for employment in the ordinary walks of life. A selfish person will always act according to his own nature, and there may be some who are ill-natured to advance special rights and disturb the family peace, but, on the whole, the state of society, as at present constituted, does not, I respectfully submit, warrant the introduction of this measure.

5. Policy and the progressive state of society may no doubt be brought in as causes necessitating this measure. I cannot see that the progress of society has been retarded by its absence. The matters put in the speech of the Honourable Member as tending to induce the earning member to take himself off from the joint family are not, I think, of much force. There is the belief still in the strong family ties, and it is believed that when a member consumes family money for his use, he will, when he earns, support those who do not earn or are incapable of earning. The result of this measure will, I humbly think, tend to disturb this equanimity and good feeling.

From M.R.Ry. Rai Bahadur V. JAGANNADHA ROW, PANTULU GARU, Deputy Collector in charge of Treasury, Gódávari, to the Under Secretary to Government, Legislative Department, dated Cocanada, 17th October 1892, No. 2570.

I have the honour to acknowledge receipt of your letter, dated the 31st August last, No. 47, and its accompaniments relative to the Gains of Learning Bill, and beg to submit the following remarks thereon.

2. I beg to premise that the principle, scope and objects of the Bill have my hearty sympathy and unqualified approval.

3. The Honourable Mover of the Bill has so ably and correctly expounded the present state of law in the matter that I deem it hardly worthwhile to quote any more authorities bearing on the subject. I may, however, add that even the orthodox portion of the Hindu community living in these parts does not, so far as I have been able to gauge its feeling, look upon the Bill with disfavour.

4. The distinction between "technical or scientific education" and "elementary or liberal education" has, I think, been very properly abrogated in the Bill. It is difficult to draw a precise line of demarcation between the two. What might be regarded as special education at one time may form part of the general education at another. A comparison between the old and present curricula of our Indian colleges and schools will show this beyond all doubt.

5. The present uncertainty of law has a tendency to induce the member of a Hindu family to seek for a division or to conceal his earnings and invest them *benami*, while otherwise he may be willing to leave the ancestral property intact for the common benefit and honour of the family. I am aware of numerous cases of this nature.

6. The proposed legislation is doubtless calculated to harmonize the Hindu law with the conditions and requirements of modern Hindu society, and the Honourable Mover of the Bill has not certainly over-estimated the benefits which are likely to result from it. In my humble opinion it is likely to engender and promote habits of thrift and self-reliance upon *that* idle and non-productive portion of the Hindu community which, as but a canker or parasite is now eating up and deteriorating the vital and self-subsisting portion of it; to bring in peace and good feeling among members of a family in the place of mutual distrust and jealousy; to obviate the necessity for a variety of *benami* transactions calculated to keep the self-earnings out of the hotchpotch; and to remove thus one of the sore causes of misunderstandings and litigation among the kith and kin otherwise dear and near to one another.

7. The objection raised by several critics to the effect that this Bill, if passed into law in its present form, might deter managing members of Hindu families from securing the benefits of scientific or liberal education to the junior members at the expense of the family funds is more sentimental than probable. In the present state of the Hindu society, there is no reason to apprehend such a catastrophe. It is not mere mercenary motives that induce the managing members of families to provide for the education of the junior members at present. It is either feelings of genuine affection and love of public approbation or fear of reprobation by the community that induce them to do so. The suggestion, therefore, that the recipient of the education should be placed under a legal obligation to recoup the family funds does not commend itself to me.

8. Whether this is a Bill which can properly be introduced before the local Legislative Council is a question which admits of some doubt. The issues involved are more imperial than local, but I assume that the point received due consideration when permission to introduce the Bill was given to the Hon. V. Bhashyam Iyengar. Presumably this Bill is not on all fours in its nature with the Kanyasulkam Bill which was thrown out some time back as beyond the scope of the local legislature.

From M.R.Ry. R. SUBRAMANYAM AIYAR, Registrar of Tinnevelly, to the Under Secretary to Government, Legislative Department, dated Tinnevelly, 18th October 1892.

With reference to your letter No. 47 of the 31st August last, I beg to inform you that I have this day despatched by book-post a memorandum containing my views on the Hindu Gains of Learning Bill.

Enclosure.

Memorandum on the Hindu Gains of Learning Bill.

As the Bill is an attempt to codify one of the several branches of Hindu law, the same will have to be based on original Hindu texts and commentaries, on the modern decisions of Courts and on custom, if any.

2. Before examining the Bill with reference to the aforesaid points, it may be said that in some respects the Bill is commendable, as it secures to the acquirer the gains of his learning and an absolute right of disposition over such gains. In some cases it may prevent unnecessary litigation for untimely partition and keep the family in a state of union. It may also stimulate industry and enterprise in other members of the family who, under the present state of the law, have a right to depend on the earning member for their support. It removes uncertainty of decisions in future litigation concerning the matter and sets at rest one of the vexed questions of Hindu law. It also procures to the acquirer the satisfaction of enjoying the fruits of his own labour without any of the restrictions of an undivided Hindu family. It remedies the hardship under the existing law that persons who acquired their education or training very often in trying circumstances may feel in having to part with the wealth they may acquire in the exercise of any calling or avocation in life to the drones of the family. No doubt it is extremely vexatious for the earning member to part with what he acquired by his own labour. These are considerations of policy and expediency.

3. Notwithstanding all this there are certain other legal and equitable considerations which make the passing of the Bill, as it at present stands, not quite desirable. In this case one may be safely guided by the original texts and commentaries on Hindu law and modern decisions.

4. With reference to the former, the first two of the marginally-noted texts are very clear on the point and lay down the rule that what a man acquires by means of his learning *at the family expense* are divisible among all members. The other two of the marginally noted seem to be not so clear at the first sight, but when properly construed clearly point to the same conclusion.

(1) Katyayana as quoted in Mitakshara, chapter I, section IV, verse 8.
(2) Narada as quoted in chapter IV, section I, verses 14 and 16.
(3) Manu as quoted in chapter I, section IV, verse 10, and as quoted in Dhayabhaga, chapter VI, section I, verse 3.
(4) Vyasa-Dhayabagha, chapter VI, section I, verses 4 and 14.

5. But sometimes the meaning of original texts is obscure and the original treatises on Hindu law bearing on the texts and expounding the law are always accepted as safe guides and acted upon by Courts.

6. Mitakshara, Dhayabagha and Vyavahara Mayuka among others, which are original treatises expounding the Hindu law, are very important.

Mitakshara, the most important treatise on the law of inheritance and partition, being a commentary by Vignaneswara on the Yagnavalkia Smrithi, is accepted as the leading authority on Hindu law in Southern India. The subject of this Bill is very fully discussed in this in chapter I, section IV. It clearly lays down that what a man gains by learning by using family funds is divisible among other members.

Dhayabagha, a treatise on inheritance by Jimuta Vahana, is accepted as the leading authority on Hindu law in Bengal. The question is elaborately discussed in chapter VI, section 1, verses 4, 14, 16, 19 and 46 to 52. While agreeing with Mitakshara in general principles, it makes a distinction between gains of learning imparted at a special cost for a special training and those acquired by a person to whom only an ordinary maintenance and rudimentary and general education were given, making the former divisible and the latter indivisible.

In Vyavahara Mayuka, a leading Hindu law treatise by Nilakanta Batta, the subject is treated at great length. It fully agrees with Mitakshara in declaring that what a man earns by learning imparted at the expense of patrimony is divisible among all members—*vide* chapter IV, section 7, verses 1 to 14.

7. As for decisions: It may safely be said that there is not a single decision going to the full extent of the Bill that gains of learning under all circumstances are indivisible. The spirit of the decisions seems to be that the gains of learning imparted at a special cost of the family for a special occupation, making it the immediate source of gain, is partible, and those

acquired by a person who received only an ordinary education at the family expense is indivisible. The Privy Council has not yet expressly decided the point. In addition to the various cases cited in the Statement of Objects and Reasons, the marginally-noted cases may also be noticed. In the first case it was held that "where the property descended is *incapable* of being considered as the germ whose improvement has constituted the wealth subsequently possessed, this wealth must equitably be deemed self-acquired."

(1) Guruchurn *versus* Goloockmoney cited in Mayne's Hindu Law, paragraph 261.
(2) Chellaperumal *versus* Veeraperumal, 4, Madras Jurist, page 54, cited in Mayne's Hindu Law, paragraph 259.

In the second case it was laid down that when a Hindu made a large mercantile fortune, his claim to hold it as self-acquired was good, though he was maintained in his earlier years, educated and married out of patrimonial means.

Of course the education in this case is only an ordinary one.

8. So the question will have to be decided with reference to the nature and extent of education and of the funds used as the facts present themselves in each particular case. Some occasional difficulty in ascertaining the facts may not be sufficient to alter the law. The Bill seems neither in accordance with the original Hindu law texts and commentaries nor with the decisions in reported cases. The Bill is a distinct advance on the present state of the law, and however salutary its effects may be on some persons, it is difficult to see that at the present state of Hindu society the distressing uncertainty of the law complained of in the speech of the Honourable Mover is sufficiently felt as a hardship so as to require special legislation. The following difficulties are felt by many persons as real.

9. If the Bill is passed into law it may probably interfere with the promotion of higher education among the members of the Hindu family, since no one member will allow a proportionately large outlay from the family funds in favour of one of the members for *no benefit* to others.

10. Instead of retarding division among the members, it may rather expedite it, so that the cost of educating a particular member may be defrayed out of his share. The elder members may lose their interest in getting their younger brothers educated in the higher branches of education. If the share of a particular intelligent member is not sufficient for his education, the promising youth finds himself cut off from his future prospects.

11. This Bill may further lead to the result of altering the existing Hindu law of self-acquisition from other sources. If the gains of learning imparted at the cost of the family is made to be indivisible, the same rule will, in justice and equity, have to be applied to other cases of self-acquisiton by other members who use the family funds in their avocations, for instance, trade, farming, &c., and it is difficult to draw the line between gains made by learning and by other means. A Bill dealing with a branch of self-acquisition leaving the other branches of the same untouched is not very clear.

12 There are other branches of Hindu law about which the texts and decisions are conflicting—the law of adoption, stridhanam, bhandu relationship, gifts, wills, benami transactions, &c. Mere hardship to particular members and difficulty of decision may not justify to legislate on these points.

13. Lastly, it may be a question whether it is advisable by means of legislative enactment to alter the existing Hindu law by which the Hindus have been till now governed, or whether it may not be safe to leave it to be administered by our eminent Judges according to the facts of each case.

If the legislature should think the former necessary and expedient, some provision in the Bill ought surely to be made for compensating the other members of the family for the outlay from the family funds made for the purpose of educating the earning member.

Tinnevelly,
18*th October* 1892.

(Signed) R. SUBRAMANIYEM AIYAR.

From M.R.Ry. S. SUBRAMANIEM AIYAR, Dewan Bahadur, to the Under Secretary to Government, Legislative Department, dated Madras, 18th October 1892.

With reference to your No. 47, dated 31st August 1892, I have the honour to state that I am in favour of legislation on the lines suggested by the Honourable V. Bhashyam Iyengar. I entirely approve of the principle of the Bill introduced by him.

From M.R.Ry. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, to the Under Secretary to Government, Legislative Department, dated Ellore, 19th October 1892.

With reference to your demi-official No. 47, dated 31st August 1892, I beg to enclose a note showing as briefly as possible my views on the Bill therein enclosed.

Enclosure.

Note by M.R Rv. Rao Bahadur R. DHURMAROW NAIDU, Assistant Commissioner of Salt and Abkári Revenue, Cocanada Sub-Division, dated Ellore, 18th October 1892.

This Bill aims at removing the uncertainty of the law of "Vidyathanam" or "learning money." According to Katyana, "Vidyathanam" is that which has been acquired after instruction received from a stranger and a maintenance provided by one of a different family. It is partible if the education has been imparted by a member of the family or at the expense of the family funds, whatever may be the nature of education received. The Madras High Court first adopted this principle and in subsequent cases drew some distinction between ordinary and scientific education.

2. But what was scientific education in one may be considered ordinary in another age particularly of progress and civilization, and the law will continue to be uncertain unless the education is defined. Of course, the Bill is opposed to the spirit of the law as propounded by Katyana and other commentators, but it is one well adapted to the condition of modern society. Even under the existing law one can claim his share and thereby come to a division when he thinks he can earn more. The other members cannot object to the division whatever be the aid the claimant has received from the family funds for his education.

3. But a Hindu who knows that he is earning more than his brothers is generally averse to partition, not out of any love to them but for fear of being called selfish. He therefore continues undivided and is at the same time reluctant to allow the other members equal or any share in his acquisitions, while the latter who are perhaps idle and do not work to support themselves or to improve the family resources think that they are entitled to an equal share with the acquirer and often press their claims to his annoyance. To get over this difficulty some are indifferent to even their own interests and do not work. Some conceal their property and secure it in other names. The Bill will not only remove the temptation for such frauds, but will also wake up the idlers who claim shares in property acquired by a hard-working member.

4. It may perhaps be said that the education of the junior members in a family would be neglected as a consequence of this law. In a well-to-do family the father does not generally expect a return from the son whom he educates at the expense of the family funds purely from a sense of duty. If he spends more for one than for another son, it is because he finds a fitting material in the former.

5. I do not think that the Bill would make any difference also in cases in which one of the brothers happens to manage the family affairs. As stated above there is nothing in the existing law to prevent his asking for division of property if he prefers it. In all such cases the family has to rely more upon the affection, gratitude and good sense of the earning member than upon any legal right created in the others. If the Bill be passed, there will be no misunderstandings, each member knowing exactly his own position. There will be a stimulus for self-exertion and harmony in the family which may continue undivided for longer periods than at present. Then there will be the strength of the joint family without its present drawbacks.

Demi-official from the Hon. P. CHENTSAL RAO, to the Under Secretary to Government, Legislative Department, dated Bangalore, 20th October 1892.

With reference to your letter, dated 31st August 1892, No. 47, I beg to submit the following observations on the Bill introduced by the Honourable Mr. Bhashyam Iyengar on the subject of gains of learning.

2. I consider that in dealing with this subject one should be guided by the opinions and inclinations of the Hindu public at large whose interest this Bill is likely to affect, and not by European notions of the fitness of things nor by the opinions of the small minority of Hindus who have come under the influence of European culture and ideas. If it were a question of the abolition of inhuman practices such as suttee or infanticide, we are certainly not bound to respect the superstitions of an unreasoning majority; but where, as in this case, we attempt to legislate in regard to rights to property and the existing methods of distribution thereof, we should certainly

not be justified in disturbing the Hindu customary law on the subject without a strong concensus of popular opinion in favour of a change. These rights and these methods of distribution have grown out of family affections and tendencies to hold together which are far from being inhuman or immoral. I would therefore suggest the appointment of a commission for ascertaining the opinion of the public in the matter.

3. I have discussed the subject with several disinterested intelligent and orthodox Hindus and I find that they are generally against the law proposed by the Honourable Mr. Bhashyam Iyengar. They consider that the view held by the Privy Council and the consequent subsequent decisions of the Bombay and Madras High Courts are opposed to the Hindu law and they are also unable to appreciate the justice and equity of declaring the gains of learning as separate property of the acquirer when such learning has been acquired at the expense of the family. I pointed out to them the inutility of declaring gains of learning divisible when it is within the power of the acquirer to make them his own by the mere exercise of his option to force a division, and the characteristic answer I received from an orthodox pandit was that if a person who receives education at the expense of the family proves so ungrateful as to force a division immediately he commences to acquire money, why then he would resign himself to his fate, but regard the ingrate as dead to the family. This contingency, however, he contended was no reason why the Legislature should step in to make things smooth and easy for the ungrateful deserter. The above remark is within my experience merely illustrative of the feelings entertained by the people in this matter, and I know for a fact that in Southern India the breaking up of a coparcenary by one of the members who is able to acquire money to the detriment of the others who are as yet unable to stand on their own legs is regarded by the society as highly reprehensible, and this dread of popular reproach has in many cases either deterred the earning member of the family from forcing a partition till the others are fairly in the way of earning for themselves or has induced him to give up portions of his share in the patrimony to his less fortunate brethren. Thus, the existing practice under which the gains of learning are divisible when the learning was acquired with the aid of the family funds is not without some practical advantage to the poorer and more ignorant members of the family whose ignorance, however, is in very many cases due merely to the fact that the slender resources of the family could not meet the expense of educating more than one member thereof. The advantages to the poorer members above pointed out would be lost should Mr. Bhashyam Iyengar's Bill become law.

4. Coming to the Hindu law on the subject as laid down in the texts and interpreting them, not according to the European method of construing a passage by the plain meaning of the words, but by the Hindu method whereby the meaning of the text is made to conform to approved usage and corresponding texts of other text writers of authority, I can come to only one conclusion, viz., that *all* property acquired by members of a joint family by means of learning is divisible unless that learning is of a special kind and acquired without the use of family funds. This is also the view of the Mitakshara which is the paramount authority in Southern India on matters of inheritance, and it is certainly the law which exists in the consciousness of the people and is approved by their conscience. The author of Mitakshara goes to the extent of holding that even absolute gifts obtained by a coparcener *without detriment to the family property* are by law and usage common property thereby enforcing his position that it is only gains specifically excepted by the texts and acquired by extraordinary exertion of individual energy that do not go into the common stock. In fact Vignaneswara thought, and following him Hindus generally think, that divisibility attaches as a rule to all gains acquired by every member of a joint family, non-divisibility being the exception in certain specified cases, one of these latter being the gains of learning acquired without the aid of family property.

5. Such unquestionably being the Hindu law on the subject, we have next to consider whether the provisions of the Bill are equitable and there is any particular social advantage to be gained by altering the law in the manner suggested.

6. I cannot say that the law proposed is equitable. If in a joint family consisting of four brothers, A, B, C, D, A works on the family farm, B employs himself in trading, C practices in the Court and earns money and D looks after domestic

management, the most equitable arrangement would be to treat all the earnings as the common property of all the four and not to exempt the earnings of C alone from division. It may be that all the other members had the use of the family capital, while C used his brains alone, but so long as they choose to remain undivided, I do not see how C can equitably claim his earnings to himself and yet claim a share in the entire earnings of the rest.

7. Nor does it appear to me that the declaration that gains of learning are indivisible is a decided social advantage. If on the one hand it induces the acquirer to exert himself better, it has on the other hand a tendency to make the other members of the joint family less contented and less industrious. For instance, in the case mentioned in the preceding paragraph, it would certainly deter A, B, and D from putting forth the same amount of energy as they would if they had a share in the earnings of C.

8. It cannot also be said that under the law proposed litigation would diminish and suits for division would become less. Mr. Bhashyam Iyengar's law may render it unnecessary for C to go to Court for a division, but it is sure to encourage the other brothers to go to Court.

9. The only advantage of the Bill is that it will to some extent effectively check the spread of demoralization. It will surely make it unnecessary for C, the acquirer of money by learning, to conceal his acquisitions, or to enter into fictitious *benami* transactions to save them from division, but here we must pause and consider whether *benami* transactions in the case of such earnings are looked upon by the public as an excusable means of evading the rigours of an unjust law or as improper and dishonourable. If the former be the case, the law must be altered, and if the latter be the case the remedy should be, not the declaration that gains of learnings should be regarded as self-acquired property, but a declaration that such *benami* transactions are punishable offences. Of course a great deal of falsehood would cease if official corruption is legalised, but no one would recommend it on that ground. So far as I know *benami* transactions are considered by the public as dishonourable even when they take place in connection with one's own earnings, and therefore if they are to be discouraged it must be by some means other than of declaring the gains of learning by a member of a joint family indivisible.

10. It may be urged that on the whole the advantages of declaring the earnings accruing from one's own exertions as self-acquired property preponderate as a motive for exertion. If so, and I have no doubt it is so, our law must have much larger scope than that proposed by the Hon. Mr. Bhashyam Iyengar. We will have to declare *all* gains due to *personal exertion* whether with or without the aid of the family property impartible. For instance, in the case mentioned in paragraph 6 *supra*, not only should C be entitled to all his earnings but also A, B, and D to the *increased* earnings and savings due to their industry and skill. But I know that such sweeping legislation is beset with endless difficulties and cannot at present be undertaken with any chance of success.

11. All circumstances considered. therefore, I think that in the present condition of Hindu society and the feelings of the people as regards personal acquisitions if any legislation is needed at all to remove uncertainty, it is in the direction of declaring the gains of learning divisible when the learning has been acquired at the expense of the family property. If such a law would induce people to separate from joint families more largely than they do at present, nothing can be more desirable. I consider that the joint family system is a clog to enterprise, a damper to self-exertion and the curse of India and the sooner it ends the better for the country.

Demi-official from A. RAMACHANDRA AIYAR, to the Under Secretary to Government, Legislative Department, dated Bangalore, 25th October 1892.

With reference to your letter No. 47, dated 31st August 1892, I beg to forward my views on the Bill introduced by the Hon. V. Bhashyam Iyengar.

Enclosure.

The Bill meets with my approval, as I am inclined to think that it is in conformity with the usages of the people. If a man who has been educated at the expense of the family earns property, the earnings are treated as his own. If he gives any property to his brothers, it is received with professions of gratitude, and if he divides his property equally or almost equally with them, or if he treats his children and their children alike, he is praised by the public for his generosity and filial affection. If his brothers stand in need of assistance, they do not claim anything as a matter of right. When I make these remarks I have in my mind about two dozen earning members who are natives of Madras, Tanjore, Tinnevelly, Coimbatore and South Malabar. These cases indicate that in the opinion of the people a man is absolute master of what he earns and that it makes no difference whether he received his education wholly or partially at the expense of his family or what was the character and quality of his education.

2. Although there is some difficulty in reconciling the texts as to the exact signification of the expression "gains of learning," it seems to me that the law left the acquisitions of an educated man entirely at his disposal. If it was otherwise, the Hindu law of partition or division would have contained a provision preventing an earning member who was educated at the expense of his family from claiming a partition at his pleasure, or the law would have enabled a Court to decree a share of his prospective earnings for the benefit of his less fortunate brothers.

3. It has been urged by some men that a father spends all his property upon the education of one son in the hope that the latter will prove a father to his brothers, that the Bill will defeat his just hopes and expectations, and that such instances are numerous. The father and other sons have no legal hold upon the earning member as is evident from the fact that the law gives him power to separate himself from them at any time. If he does not exercise that power, if he maintains his brothers and even shares his property with them, it is by reason of his natural love and affection. Again, non-division is the normal condition of Hindu families and one does not willingly act contrary to the law and usages of his people. If a man separates himself when he is able to stand on his own legs and when his father and brothers need his assistance, it is base ingratitude and selfishness and public opinion will point the finger of scorn at him. It is these moral considerations that impel an educated man to act considerately and even generously towards his father and brothers and other members of his family, and I see no reason to fear that if the Bill is passed these considerations will cease to exercise their legitimate influence.

4. The law being somewhat unsettled by decisions, I think that the point should be set at rest by the Legislature. A Bill which is in conformity with the Hindu law, or at all events with the law as understood and acted upon by the people, ought not to be open to any objection.

(Signed) A. RAMACHANDRA AIYAR.

From M.R.Ry. C. GOPALAN NAIR Avargal, Sub-Judge of North Malabar, to the Under Secretary to Government, Legislative Department, dated Tellicherry, 26th October 1892.

I have the honour to acknowledge your letter No. 47, dated the 31st August 1892, sending me a copy of "a Bill to declare gains of learning by a Hindu to be his separate property," which the Hon. V. Bhashyam Iyengar has obtained permission to introduce into the local Legislative Council, and to state, in reply, that I am a strong supporter of this Bill. The principle embodied therein has always been accepted as customary law among Marumakkatayam and Aliyasantanam people in the districts of Malabar and South Canara, and in all my judicial experience of over 24 years in these districts, I have never known a single case among them in which any acquisitions made by one member of a family by means of learning were ever claimed by its *karanavan*, *ejaman* or other members as belonging to the common estate by reason of his being educated with the funds of such family. Even among other Hindus in these districts and elsewhere, it seems to me that no doubts would have arisen but for a few decisions based on obsolete texts of Hindu law which themselves had their origin at a time when the patriarchal system was in its ascendency and when the existence of private property and the right of division among coparceners were almost unknown among Hindus, and I need scarcely add that all such views have disappeared even with orthodox Hindus of rigid conservative views in the present state of society.

2. I have no fears that the fathers or other managers of families would ever neglect the education of their sons or other members merely because the effect of such a law would make the earnings made by such education the separate property of the acquirer, and it appears to me highly desirable that all doubts on this part of the law should be removed by a legislative enactment on the lines of the present Bill.

3. With reference to paragraph 3 of the Statement of Objects and Reasons, I would respectfully suggest that the provisions of this Bill should also be made applicable to Mussulmans or Moplahs who follow the Marumakkatayam or Aliyasantanam law of inheritance, as they are subject to all the incidents of Hindu families following the same law in the matter of the acquisition, enjoyment and devolution of properties.

From C. RAMACHENDRIER, Esq., District Judge, Nellore, to the Under Secretary to Government, Legislative Department, dated Nellore, 2nd November 1892, No. 661 Civil.

With reference to the letter, dated 31st August 1892, No. 47 (Legislative Department), I have the honour to submit the following report:—

1. The Bill proposes to enact that all gains of learning shall be considered the self-acquisition of the acquirer with a view to bring harmony and good feeling in Hindu families.

2. The mover of the Bill, on referring to the texts of Smirithi writers, the decisions of the High Courts and the Privy Council, concludes that time has come for legislative interference, as he apprehends that the law is vague at present, that it is capable of mischievous consequences, and that the law should be altered by Legislature in accordance with the modern notions of right and wrong.

3. The Hindu law affects not merely the social law of the Hindus, but it is a part and parcel of their religious institution, and consequently the Government have not accepted the suggestions from different quarters to codify the Hindu law.

4. It is contended that the early text writers were in favour of classing all gains of learning as self-acquisitions, and the narrow views subsequently advocated is due to the gloss of the commentators. This reasoning is not acceptable; for otherwise it would follow that we are at liberty to give up the commentators and follow our own interpretation of the earlier texts. If this were so, we should be asked next to give up the law of the Mitakshara to follow fanciful interpretations of the texts of Yajnavalkya.

5. The second ground of the mover is that decisions are vague. There is nothing uncertain or vague in the decisions of the High Courts. The law is certainly clear that all gains of learning is partible if the learning has been acquired at the expense of family funds or where receiving a family maintenance. Of course the *obiter dictum* of the Privy Council might inculcate a different view, but it seems certain that if the full texts were before them they might have come to a different conclusion altogether. But because the views of the Privy Council are somewhat vague is no reason for legislative assistance. If this were so, in every case in which the law as laid down by the highest tribunal is vague or does not meet the requirements of all, the aid of the Legislature would have to be invoked. The other day the Madras High Court decided that a re-married Brahmin widow and her husband are not entitled to go into the inner shrine of the temple. The re-married couple are still Brahmins and why the Legislature should not interfere and pass a short enactment declaring their right to go into the inner shrine on the ground that the decision has the effect of impeding reform and progress.

6. I do not see what enables the mover of the Bill to think that the present law encourages fraud or concealment or gives occasions for benami transactions. Fraud, &c., are due to various causes, and it is not right to say that such transactions exist in a large measure in the case of persons who are able to earn largely owing to their being endowed with learning and consequently high mental culture and endowed with valour or skill.

7. If this piecemeal interference was once granted, then, of course, a death-blow must be given to the present administration of Hindu law.

(*a*) Why should a Hindu widow's powers of alienation be curtailed at the instance of a dayadi of the sixth degree?

(*b*) Why should a Hindu widow's right to retain possession of her husband's property cease with her re-marriage, which law has the effect of discouraging morality and encouraging prostitution?

(*c*) Why should a lady just this minute in full possession of all the property with her husband be driven the next moment to sue for maintenance, because the husband happened to die a few minutes earlier perhaps than other coparceners of the same family? If the law declared a married woman entitled even in undivided families to possession of her husband's share during her lifetime, it would be very wholesome and would obviate the miseries of widows.

If all these be matters on which Hindu law is at variance with our modern notions of equity and justice, why should one portion alone of Hindu law be altered by legislation? Why not abolish Hindu law altogether and substitute instead the Indian Succession Act or some other enactments based on no sound principles or customs?

8. Far from promoting harmony and good feeling in Hindu families, the Bill will of course create a good deal of heart-burning where previously it did not exist.

9. The obvious objections to the Bill may be stated as follows:—

(i) It makes a distinction between the gains of learning and gains from trade and other sources and gives all the advantage to the former. It is obvious that a large amount is spent on the education of a Hindu youth. If this money had been spent by another member of the joint family on trade, the whole of his acquisitions become partible, and it is unjust that where there has been expenditure incurred from family funds, one person alone should reap the benefit derived therefrom to the exclusion of the rest.

(ii) In a family possessing a large landed estate and consisting of five members, one receives a liberal education. The other four spend their time and energy in improving the landed property and earning large profits from their personal exertion in improving the land and effecting a saving. The man of learning would be entitled to all the savings earned by the life blood of those four, while he would be entitled to keep for himself his whole earnings. Such a state of things is unjust in the extreme.

From M.R.Ry. V. RAJAGOPALA CHARIAR Avargal, Treasury Deputy Collector, Malabar, to the Under Secretary to Government, Legislative Department, dated Calicut, 3rd November 1892, No. 582.

In acknowledging with many thanks the receipt of your letter No. 47, dated 31st August 1892, I beg to submit herewith a memorandum of my views on the Bill "to declare gains of learning by a Hindu to be his separate property" framed by the Hon. V. Bhashyam Iyengar. I beg to be excused for the delay in sending the same.

Enclosure.

The Bill under consideration aims at codifying a portion of the Hindu law and as such has much to commend it. It proposes to deal with what is termed "Vidyathanam" or gains of science and to declare that property acquired by a member of a Hindu family substantially by learning shall be his exclusive and separate property irrespective of the method and means by which he is educated and the person who educated him. The Honourable Mover of the Bill has clearly and fully explained in his Statement of Objects and Reasons the original texts bearing on the subject, the subsequent gloss of commentators and the still later expositions of the law by British Courts of Justice and has described impressively the inapplicability of the law even as enunciated by recent decisions. The simpler and clearer the law, the better and easier it is to the community and the Judges who are to follow and administer it. The proposed Bill has certainly the advantage of simplicity and steers clear of all fanciful distinctions. It is also easy of application.

2. If the principle underlying its provisions should be an innovation, the ingrafting of a foreign element on the indigenous law of the land which Government has bound itself to administer, then indeed one should pause and consider before adopting it. The idea of separate property is not foreign to Hindu law, and "gains of learning" as separate property subject to certain restrictions were apparently recognized by the earliest Smirithi writers. What is now

proposed to be done is to adapt the Hindu law texts to the present state of society by defining the term "gains of science" so as to be more comprehensive. In early times when the several members of a family lived jointly under the control of one head member, whether under the patriarchal or the joint family system and were mostly tillers of soil, there could not have been much scope for self-acquisition nor in consequence any necessity to frame rules to regulate the rights of individual members to it. Partition too must then have been unknown. The present condition of Hindu society is far different. Population has increased and the land available for cultivation is in consequence more restricted. With the advent of the British and the spread of western civilization now wants have sprung up and various fresh walks of life and vocations have been opened out. We find around us a hot race and a keen competitions after the worlds best effects in the various pursuits and callings of life. Such being the case it is no longer possible to adhere to the old principle of community of goods, especially that kind of indiscriminate community where the whole belongs to each and every member of a joint family. It is therefore but apt that legislation should provide for securing individual rights in a manner consistent with the change in the times. The legal recognition of separate property will be an incentive to individual exertion and will be productive of substantial good to the community in general.

3. The provisions of the Bill will decidedly be acceptable to the educated portion of the Hindu community; for it is the educated members of a family who are able to acquire separate property and the Bill secures their rights to their self-earnings as against the others. If in the class of educated may be included all those who have had the benefit of "learning" in the comprehensive sense in which the term has been defined in the Bill, then they may be said also to form a major portion of the Hindu community. The Bill may not be acceptable to the now comparatively few idle members of Hindu joint families who without contributing anything themselves towards accession to the family fund profit at others expense, but it is a point for consideration whether this need weigh much with the Legislature in introducing a measure which it is satisfied is good by itself and is demanded by the exigencies of society as at present constituted.

4. Let me now proceed to the consideration of the objections it is possible to raise against the Bill. The first is that if it should become law, it would effect prejudicially education. The head of a joint Hindu family will not care, it might be argued, to educate the minor members when he sees that what they acquire by means of the education so imparted cannot be claimed either by himself or for the common benefit of the family but would go towards aggrandising the members educated individually and their personal heirs. In the first place we do not find as a rule large joint Hindu families comprising several members, such as brothers and cousins, uncles and nephews, in existence now. The tendency on the other hand is in the direction of families splitting up; several disintegrating forces are at work which bring about the dissolution of a joint family and the creation in its stead of many offshoots each with a narrower sphere where the family tie and affection is strong between its component parts. Instances are not uncommon of even sons dividing from their fathers when they grow up and begin to have a family of their own. Ordinarily a Hindu father does not educate his son in view to the prospective good which he hopes to obtain thereby. It is more his instinctive attachment to his son and the desire to see him launched well in life which act on him. As between his different sons if he should spend a larger amount in educating one in preference to another, it is a mere matter of accident depending as it does upon the peculiar aptitude of that son and such other similar circumstances. Further even granting for argument's sake that self-interest is the predominating factor, he knows full well that even at present it is in the power of his educated son to frustrate the object in view by demanding partition just at the nick of time when he begins to make any large acquisition. For these reasons the argument of education being retarded by the introduction of the measure has not much force in my opinion.

5. In Malabar, however, the joint family system prevails to a larger extent and the provisions of the Bill are to be held to apply to families governed by Marumakkatayam and Aliyasantanam systems of law. It is therefore worthwhile to consider what will be the effects of its introduction in that district in respect to education. Even under Marumakkatayam law the acquiring member can deprive the tarvad of the benefit of his self-acquisitions by disposing of them during his life and the tarvad can claim, as a matter of right, only the residue after his death. If the uncertainty of getting the self-acquisition of an educated member to the extent existing at present does not operate as a bar to karanavan's educating the junior members, it seems doubtful whether the consciousness of having no right to it after his death will prove to be any very great obstacle. It appears further that in many cases it is the father, when he is a man of means, who educates the son and not the karanavan of the tarvad, of which the son is the member. The father does not now do so with a view to any prospective benefit either to himself or his family, and the Bill will not therefore affect his endeavours in that direction prejudicially. There is this additional advantage in the present Bill becoming the law that the craving of the educated portion of Malabar as evinced in another Bill now before Government for the legislation of their marriages and the recognition of individual right to self-acquisition so as to devolve the same on their personal heirs would be partly met and satisfied even though there should be any difficulty in getting the other passed by reason of its aiming at a change in the very constitution of the society.

6. Another objection which might be taken to the Bill is that though it is all well and good from the standpoint of an acquiring member, its provisions are not fair as against the person who educated him and placed him in a position to acquire. Let me for the purpose of illustration take an extreme case, say, of a father who possessed very little means divests himself of all that he could share in giving his son a high English education. Let me also suppose that the son becomes successful in life but turns out his father adrift at a time when he is not in a position to support himself. As the law stands at present the father and son are undivided members, the education has been imparted at the father's expense and the father can claim, as a matter of right, a share in the self-acquisition of his son. Under the Bill, however, the son's earnings will form clearly his separate property to which even the father cannot well lay claim. A case of this kind occurring is no doubt improbable. Family affection is generally strong amongst Hindus and an educated son specially is not likely to lose his sense of moral rectitude to such an extent as to abandon his own father. Still such a contingency is possible and the Bill does not provide for it. Again the father and the son may live harmoniously, but the son may die leaving a childless widow behind him and a large property consisting exclusively of his self-acquisition. Under the Bill as between the widow and the father the former will have the precedence and the result might be that the father is left destitute. It might be asked whether this is not a harder case to be safe-guarded against. In the first place acquisition by "learning" is only one of several kinds of separate property recognised by Hindu law. This incidence of hardship is equally applicable to the devolution of other kinds of separate property and there is no specific reason why "gains of science" alone should be dealt with in a different manner, as between the father and the widow it is the latter that is likely to be more helpless and to stand therefore in a greater need of protection, and a law which secures her rights cannot be said to be inequitable. As a matter of fact we seldom see the father's interests jeopardized by those of the widow and they are not likely to be the worse off also when this measure becomes law.

7. As already stated the case above put forward is an extreme one. The dispute in respect to self-acquisition does not arise ordinarily between a father and his son or the son's heirs, but between collaterals one or two degrees remote, as between them the personal heirs of the person leaving large self-acquisition are certainly fitter objects of protection by law than those others whose claims are more remote. It might be said that a father in educating some of his sons expects the others also to be benefited thereby and that it will be frustrating the object he had in view by depriving the other sons or their heirs of their rights. When one is so disposed we might expect him to provide liberally for such other members, and this is what is actually done now. When he is not so disposed any amount of external pressure is not likely to be productive of the desired result. On the whole it is a matter which should be left to adjust itself according to the circumstances of each case rather than to be safe-guarded against by legislation.

8. Another objection which might be raised against the Bill is that by recognizing in unmistakable terms another form of separate property in respect to which there was still now a considerable amount of uncertainty and restrictions, it will have the effect of bringing about a further disintegration of the Hindu joint family system which is the normal condition of Hindu society and a further diffusion of property which is of doubtful utility to the welfare of the community at large. As regards the first portion of the objection in a society where partition is recognised by law and is enforceable on the motion of any one member of a family, the joint family system cannot thrive and must break up sooner or later. The effect of the present Bill will be not to accelerate the progress of disintegration, but to defer division by removing the cause of anxiety in the acquiring member which forces him to become divided when otherwise through feeling of delicacy and other considerations he may find it undesirable to do so. Whether the concentration of wealth in selected quarters or its diffusion amongst several is of greater benefit to a community is a controverted question which it is unnecessary here to discuss at length.

9. No other possible objection suggests itself to me. Even granting that there is some substratum of truth in the abovementioned objections, it must be admitted that the introduction of the measure proposed is likely to result in producing all the advantages enumerated in the last paragraph of the Statement of Objects and Reasons. The question to be decided then becomes whether the advantages or the disadvantages preponderate. On a careful consideration I am inclined to believe that the good will outweigh any possible harm which might arise and I therefore support the Bill.

31*st October* 1892.

From M.R.Ry. C. KALYANASUNDRAM CHETTIAR Avargal, Assistant Superintendent of Stamps and Stationery, to the Under Secretary to Government, Legislative Department, dated Madras, 15th November 1892.

With reference to your letter No. 47 of the 31st August last enclosing a copy of "a Bill to declare gains of learning by a Hindu to be the separate property" and the

annexure thereto containing a Statement of Objects and Reasons for an expression of my views thereon, I have the honour to state that I have carefully gone over the above papers and am of opinion that the Bill, if passed into law, would undoubtedly secure to the Hindu community the advantages which the Honorable Member has so ably put forward in his Statement of Objects and Reasons.

From the very nature of the Bill it could hardly be expected that the educated portion of the Hindu community would stand in the way of this wholesome measure obtaining a permanent place in the Statute Book of the land.

From M.R.Ry. Rao Bahadur T. PATTABHIRAMA PILLAI Avargal, Deputy Collector, General Duty, Tanjore, to the Under Secretary to Government, Legislative Department, dated Tanjore, 18th November 1892.

I gave my best attention to the provisions of the "Hindu Gains of Learning" Bill and carefully thought over the matter with reference to the authoritative decisions on the subject so tersely put in by the Honorable V. Bhashyam Iyengar in the Objects and Reasons of the Bill and with reference to the present state of the Hindu society. In my humble opinion, such an enactment as the Bill contemplates seems most desirable, as it would set at rest all the conflicting opinions of the commentators of the different schools of the Hindu law and put an end to the vexatious uncertainty of law on the point which at present exists. The authorities on the Hindu law and their commentators had in view the state of society as it existed at the time of the law-makers. The percentage of educated men among the Hindus, inclusive of those who have received no more than a mere rudimentary education, must have been very low when the law as regards the gains of learning commenced to prevail among the Hindus.

If with the aid of the Press, with the solicitude and exertion of the paramount power for the education of the mass, with the earnest desire on the part of the well-to-do Hindus to give their sons the best education available, with the increasing number of affiliated colleges and high schools in the country, and with numberless elementary schools in villages, &c., the percentage of educated men among the Hindus is only $6\frac{2}{3}$ per cent. for the Madras Presidency according to the census of 1881, there can be no doubt as to the number of educated men among the Hindus having been very limited in the days of the Hindu lawgivers, and education must have been confined only to such families which could afford funds for educating the children. It was, therefore, very proper in the olden times for the uneducated members of a family dividing equally the gains of learning of one who was educated from the funds of the family. Jimuta Vahana's comment that the gains of learning is one's own separate property, provided the education given him from family funds was only ordinary, shows that it is a later authority and the principle an improvement over the older authorities which made no distinction between ordinary and special education. In the present state of society, it is high time to remove the present uncertainty of the law on the point and to declare that the gains of learning among Hindus is the acquirer's own separate property. The continuance of the present uncertainty only serves to tempt the idle members of a family to live at the expense of the more talented member and to throw obstacles for the gifted member becoming divided and drive the latter to the wicked concealment of property and benami transactions. The settling of this knotty question by law would to a certain extent impart a healthy tone and raise the standard of morality among the educated and higher class of the Hindus. I do not say that there cannot be hard cases. As for instance, the parents of a poor family may part with their landed and other property for the education of the most intelligent boy in the family, relying entirely upon his gains for the future maintenance of the family, *i.e.*, of themselves and their other boys. If the boy take shelter under the new law and refuses to maintain his parents and brothers, all the members of the family will feel sorely disappointed; but such instances will be very rare and cannot be so many as to make the law a hardship to any appreciable

portion of the community. When the law is made certain, it will be simply an inducement to every one of the members of a family to work for himself and win his bread, instead of remaining lazy in hopes of participating the gains of learning of the more active member. Parents intend education to their sons as a sort of equipment to them for acquiring means of subsistence as well as for their conduct as men and members of society. It may be ordinary or rudimentary education, or special or technical education. All children are equally entitled to such an equipment and the discerning power of the parent selects the branch best fitted for each boy. One of the sons may choose the legal profession, another the medical profession, a third to trading, and so on. A discreet father, in whose mind no idea of participating in the gains of his sons enters, gives each son such education as would befit him for the profession he is found most inclined to; very probably a larger amount of family funds might be spent on the son gifted with superior intellect. The father couldn't hesitate to spend as much upon the rest of his sons if he found them equally good; and, therefore, if more money is spent upon one son than the other in a family, it is because that son was found more promising and deserving. The father arms each boy with such education and qualification as he (boy) is capable of to fight the battle of life in the world. It, therefore, stands to reason that the cost of such an equipment that the father defrays of his own free will from the family funds shouldn't affect the earnings of each son becoming his own self-acquired property. Learning is not the only qualification for gaining wealth. Character, health, hard work, chances and the will and discretion to turn such chances to good account have much to do in a man's success in life. It is, therefore, not very correct to say that a man's gains resulted from his learning alone. It is besides most illiberal to make the gains of a man of learning divisible among his brothers equally with him. On the other hand, it may be argued whether it isn't desirable that a man on whose education a larger amount of family funds is spent because of his talents should be left to share his gains equally with his less gifted brothers, as the commentators of the Hindu law would have it, and why the other members of the family should forfeit the privilege of sharing in the above gains which the law of the land entitles them to. I have here only to point out (1) to the extreme difficulty of proving how and why the father happened to spend more money on the education of one son than the others and whether the father was not anxious to educate all his sons alike and spend just as much money upon the other sons, and (2) to the disheartening uncertainty that now exists as to the success or otherwise of a suit to participate in the gains of learning of one member of a family. I shall ask those that are for leaving the law alone to pause for a moment and revolve in their minds whether the existing state of law is satisfactory and whether it doesn't demoralize those who work hard to gain wealth as also those who remain idle and plot for sharing the gains of the active member of an undivided family. What number of benami transactions, what amount of concealment of property, fraud and consequent heart-burning disappointments, what fabrication of false evidence, what waste of labour, wit and money, what number of profitless suits and waste of public time and the energy of public officials could be saved by making the law certain on this vexed question is another point to which I would invite the attention of those who are for leaving matters alone. It is clear, from the Hindu law quoted in the Objects and Reasons, that the lawgivers originally intended that vidhyadhanam or gains of learning should be made one's own self-acquired property; but Katyayana, the commentator, interfered and defined it as below:—"What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning." This definition, perhaps, was justifiable as the Hindu society was at Katyayana's time constituted. Whether just or unjust, all the other commentators, except Jimuta Vahana, caught the contagion and gave their dictums accordingly. The effect of these comments has been to handicap the gains of a man's learning and make it partible among the members of a family. The original idea of creating gains of learning as self-acquired property was altogether cast away. Some may, perhaps, think whether such a law as the Bill contemplates will not (in those cases where the father is dead, the eldest brother is the managing member and his brothers minors) prevent the minors receiving such education as their talents deserve and whether it will not serve as a motive to the managing

member to give no education whatever to the minors to save himself the trouble and the family the expense of educating and bringing them up, and whether the law, as it now stands, is not a powerful inducement to give the minors the best education they are capable of. To these, I have only to say that the internal management of the affairs of a family, the circumstances which induce and prevent the education of the minors, are so many and so varied that they cannot be brought under the influence of the law and strictly controlled.

I therefore do not hesitate to say that the Bill, when passed into law, will be an advantage to the society.

From M.R.Ry. V. SRINIVASACHARLU Avargal, Subordinate Judge, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated 19th November 1892.

I have the honour to receive your favour of the 31st August last accompanied by a copy of a Bill introduced into the local Legislative Council by the Hon'ble V. Bhashyam Iyengar "to declare gains of learning by a Hindu to be his separate property."

In his exhaustive Statement of Objects and Reasons, the learned author of the Bill has quoted *all* the Hindu law texts and the judicial decisions bearing on the subject and is of opinion that "if one were at liberty to deduce the law therefrom, disregarding the gloss of commentaries, however high their authority may be, he will not be far wrong in regarding the provisions of the Bill as being substantially in accord with such law."

This Bill, after its introduction into the Council, has been very anxiously considered and discussed on several occasions by several educated Hindus and a great many of them seem desirous that it should be passed without any alteration or amendment. They are of opinion that whether the Bill is or is not in accordance with the Hindu law, the gains which a Hindu member may make by his industry, skill and learning should be at his absolute disposal whether the education which he has received and which may have mainly contributed to the acquisitions made by him was imparted to him at the family expense or not. Others again seem, however, to take a different view, and, while recognising the very salutary principle underlying the Bill which tends to encourage habits of self-reliance and self-exertion among the members of a native family, they will at the same time insist upon every member, educated at the family expense or a father's expense, providing from his acquisitions for the education of the junior members of the family so as to give them a start in life and for the maintenance also of their aged and infirm parents. They, too, do not go so far as to advocate the partibility of any property acquired by such persons; but consider that it is but meet that they should not disregard the junior and dependant members, but should, while obtaining the benefit of the Act, make some compensation for it in the way suggested. Very often it is found that a father of humble means educates one of his sons, probably his eldest born, very much out of his means, by mortgaging or otherwise encumbering his little property in the hope that, when his educated son succeeds in the world, he will pay due regard to the bringing up of the junior members of the family. It is not also uncommon that, with a similar hope, a poor parent tries to leave by a sufficient amount of his beggings for educating one of his sons and brings him up. It is asked that whether in these cases it is proper to let go the educated member with his gains, freed of all obligations to contribute towards the maintenance of such parent or to educate his undivided brothers and nephews, and whether one can safely rely on the good will and moral sense alone of such a person. They seem to think that "the moral sense of the youths of the present day is too frail a reed to lean upon and what is merely a moral obligation is worse than no obligation nowadays when each man is for himself and none else." It is feared that, without

some provision in the Bill providing a safeguard for such purposes, the Bill, when passed, will break up the Hindu family system and cause ruin to many families and may necessitate also the introduction of a poor law for the country.

These arguments, indeed, seem to have some force; but how is this safeguard to be provided? There may not be any need for providing for the maintenance of old and helpless parents, as the law already existing will take care of them adequately; but it seems to me rather difficult, if not impracticable, to provide for a legal obligation for the education of dependant boys and girls. What kind of education should be imparted to them and for what period and at what expense, these cannot altogether be well defined and satisfactorily provided for in a legal enactment. One brother may ask for being sent to England for competing for the Civil Service or studying for the legal or medical profession, another may say he will go to Dehra Dún, and so on. Can the person educated at the family expense be compelled to open his purse freely for such demands, even if he had the means for it?

It seems to me unnecessary that any provision for such cases should be made. Whether a person who makes gains by "*his science*" may or may not be educated at the family expense, the duty of educating the junior members of his family, in the absence of family property, may well be left to his good and cultivated moral sense and no legal obligation needs to be imposed upon him. The advocates of the opposite theory need not be reminded of persons who have acquired their education otherwise than at the family expense, showing their generosity by the liberal aid they have given pecuniarily and otherwise not merely to undivided members of their family, such as brothers and nephews, but also to others more distantly connected with them. Numerous instances may be quoted in which people have voluntarily settled a substantial portion of their gains upon dependant members for their support. How many sons of sisters and grandsons by daughters are now brought up by their well-to-do maternal uncles and grandparents. Sons of divided and poor co-parceners are often educated at the expense of their richer relations. What is it that prompts these people to perform these acts of generosity towards such people? No legal enactment imposes any obligation upon them. If so, why should such legal obligation be needed in the case of a person educated at the expense of family property? If the legislature tried to impose one, how long is this to last? Suppose he tried to separate himself by legal measures from the rest of his family, should the obligation continue to exist even after it. To attempt to do so will be to advance a step further than what is supposed to exist under the present state of the law and that obligation may be also sometimes more onerous than declaring his gains to be partible.

It is therefore my humble opinion that the fear entertained of the Bill, when passed, revolutionizing the Hindu family system and disintegrating and ruining families, seems groundless and that the Bill needs no alteration nor amendment. If the moral sense of any person is "too frail a reed to lean upon," he cannot be expected to discharge even his legal obligation. As soon as he begins to acquire property, he may try to frustrate it by enforcing a partition of the little property they may possess then between himself and the other members, and when that is done there will be an end of it, unless the obligation should attach to him even after separation, which, as I remarked already, is neither practicable nor proper.

The learned author of the measure before the Council appears to have carefully thought out the matter on all sides and framed it so as to suit the sense of the educated community as it is at present constituted.

From M.R.Ry. S. NARAYANASWAMI CHETTY Avargal, Diwan of Venkatagiri, to the Under Secretary to Government, Legislative Department, dated 20th November 1892.

I have the honour to submit the following views on "the Bill to declare the gains of learning by a Hindu to be his separate property."

In my opinion the Bill is an important and a necessary measure, important in removing the distressing uncertainty of law on this subject and necessary in introducing peace into many a Hindu educated home.

Various texts are quoted in support of the main principle of the Bill. I should think that even without them the measure is desirable in the present advanced state of Hindu society. In my opinion there is no new departure from the Hindu law as is explained at length by the Honourable Member in charge of the Bill in his Statement of Objects and Reasons, and it is unnecessary to go over the same ground here, but a certain amount of obscurity having prevailed on this subject a clear piece of legislature has become an undcubted necessity.

From M.R.Ry. A. SASHIAH SASTRI Avargal, to the Under Secretary to Government, Legislative Department, dated Pudukkóttai, 20th November 1892.

In acknowledging your printed demi-official of the 31st August, received on the 14th September 1892, I much regret that I have allowed such delay to occur as to necessitate your reminder, dated 17th instant.

2. The subject of the Bill drafted by the Honourable Bhashyam Iyengar is a very serious and complicated one.

3. There is no question that the ambition of modern youth is to monopolise for themselves and their children all the fruits of the education which they may have received at the expense, partially or wholly, of the joint family property, or even of such acquisitions, as begging, by the personal labours of the common parents; but the further question is whether a declaration of law such as is proposed will not imperil more vital interests and the well-being and the mutual relations of the Hindu society than appear on the surface.

4. I am of opinion that a law of the kind will grate against the sense of the whole nation, will undermine to some extent the relative and hitherto unquestioned titles to, and claims of, the members of a joint family and produce a general disturbance of property and uneasiness, if not soreness of feeling. I would rather trust the established courts of the land to decide each case as it comes up before them on its own merits as has been the course hitherto—a course which leaves a wide door for generous proposals and sensible acceptance of compromises by members of a joint family—a door which will in most cases be shut against them if there was a law to back those who are ungrateful and ungenerous to the parent stock after Fortune has singled them out for her favours.

From M.R.Ry. M. SRINIVASA RAO Avargal, B.A., B.L., Deputy Collector, General Duty, Madura, to the Under Secretary to Government, Legislative Department, dated 21st November 1892, No. 589.

With reference to your letter No. 47, dated Ootacamund, 31st August 1892, Legislative Department, I beg to offer my views on the "Gains of Learning Bill" as follows.

2. I beg to submit that I fully endorse the views of the Honourable Member, who is the author of the Bill, expressed in the "Statement of Objects and Reasons" and to state that, in my humble opinion, it is now high time that the law on the subject should be definitely settled by means of legislative enactment. I also think that the proposed enactment to declare the property acquired substantially by means of "learning," as defined in the Bill, to be the sole and separate property of the acquirer without reserving any right to the other members of the acquirer's joint family, although they or any of them, or the family, may have wholly, in part contributed to, or aided, the acquirer in attaining the learning or education, by means of which the property is acquired, is a just and equitable settlement of the question and is one that is calculated to promote the happiness and progress of the Hindu community. As observed by the Honourable Member, in the present condition of Hindu society, such an enactment is very much needed in the interests of the peace and happiness of the

Hindu families. Under the beneficent rule of the British Government which has afforded, and is still affording, many facilities for the acquisition of various kinds of education by which people could not only earn their livelihood, but also acquire a good deal of wealth, many Hindus, who are members of joint families, have acquired and are acquiring properties by means of their education in the professions of law, medicine, engineering, and by employment in the numerous other departments of the public service. The measure will therefore be welcomed by all such persons. I do not believe that there will be any considerable portion of the community, excepting a few idle members of the joint families who have not taken advantage of the facilities afforded by their parents and the Government to acquire any useful education, who will in any way be opposed to the measure. The Hindu parents of the present day, who fully appreciate, and who are fully alive to, the advantages to be gained by the modern education in various branches of knowledge, as a rule, afford equal facilities to all their sons in acquiring learning and education. As a general rule, all the sons are started on equal terms so far as education is concerned with reference to the means or the family funds required for acquiring the desired education and learning. It is only in some exceptional cases, either owing to the natural incapacity of any particular son or his own idleness or misconduct, that he lags behind the others who began with him on equal terms. There may be however cases in which family funds have been utilized to a much larger extent than the means of the family could afford in the case of any particular member, when, for instance, a member is sent to England to be educated for the bar or the Civil Service. In such cases it may be contended that it is only "fair that his gains should fall into the common stock as a recompense for the extra outlay incurred;" but I beg to submit that even in such cases the gains of the acquirer should be declared his separate property. This may be considered a little hard on the family; but there is really no reason to fear that, in such cases, the acquirer will forsake the other members of the family and enjoy all his gains himself. On the other hand, it may be hoped that the feelings of affection and cordiality between them will increase and the other members will feel proud of him and look upon as one who has done great honour to the family, and, in fact, raised it in the estimation of the people generally. It is only reasonable to suppose that in such circumstances the acquirers will reciprocate the feelings. If, on the other hand, there be feelings of antagonism, the other members trying to assert a right to share in his acquisitions, and he, on the other hand, contesting such right, there will be no happiness in the family and there will be no inducement to enterprise.

3. I am of opinion that there will be no hardship in making the enactment applicable to all acquisitions whether made before or after the commencement of the Act. The exceptions provided for in section 4 are sufficient.

4. The subject, though forming part of the Hindu law, is one entirely unconnected with any religious ceremonies or practices prescribed by any shastras or custom and concerns only the civil rights of the acquirer and the other members of the family irrespective of the performance of any religious rites or ceremonies that the legislature may without any—the least—suspicion that its action may be regarded as an interference with religious customs and practices pass the measure in the interests of the happiness of all parties concerned, unmindful of its contravening any recognized rule of Hindu law laid down in the smrities or their commentaries.

5. The existing state of the law on the subject has been so ably reviewed by the Honourable Member that it is quite unnecessary for me to say anything on the point. It is quite clear from the "Statement of Objects and Reasons" appended to the Bill by the Honourable Member that it is hopeless to search for any reasonable and clear rules of law either in the smrities or their commentaries, or in the decisions of the courts for the solution of the various difficult questions that arise in connection with this part of the Hindu law and in my humble opinion it is not necessary to appeal to any authority based on Hindu texts of law or decisions of courts to justify the measure and to bring home to the public its utility. I beg to submit that it is sufficient to show practically how highly beneficial the measure will be and how very necessary it is to have a definite legal enactment in the place of the chaos of Hindu law texts and the decisions.

6. The following are a few of the practical results of the proposed enactment :—

(1) The measure will have the most important practical result of removing "the distressing uncertainty in which this topic of Hindu Law is involved," and thus put an end to a great deal of unnecessary and sometimes "ruinous and demoralizing litigation" among the members of the same family.

(2) The acquisition of property by means of learning will be stimulated, as the acquirer will be sure of enjoying the whole fruits of his labour himself without any anxiety or uneasy feeling that the other members of the family would put forward unjust claims to deprive him of his hard-earned property. This will naturally promote individual enterprise which is an important condition for the moral and material progress of a community.

(3) As a consequence of the above two results, the measure will also tend to promote peace and goodwill among the members of a joint family, who, instead of treating each other with distrust, and of entertaining inimical feelings towards each other, on account of a real or imaginary injury to their interests by the conduct of the acquirer of property in respect of such property, would regard each other with feelings of cordiality and affection and confidence when their rights are clearly defined and declared. I beg to submit that several cases of members of joint families treating each other with feelings of distrust and antagonism have come to my notice, the sole reasons for such a state of things being the uncertainty of the law.

(4) The measure would also to a great extent put to an end to those objectionable and sometimes fraudulent transactions resorted to by the acquirer of the property, especially in the case of a member of a Marumakkatayam or Aliyasantana family, with the view of protecting his acquisitions from the clutches of the other members of the family and for securing it for his own wife and children.

7. I beg to suggest the addition of the following expressions in the draft Bill, viz.:—

(1) "physical or mental" after "and training of every kind" in line 3 of 1st clause of the 2nd section; for instance, the training acquired by gymnastic teachers, gymnasts, acrobats, dancers, songsters, &c.

(2) "wholly or in part" after the word "aid" in the 4th and 5th lines of clause (*a*), section 3.

(3) Although aid strictly implies only partial aid, it is better to make the expression clearer and wider by the insertion of the above expressions after it.

From M.R.Ry. M. B. SUNDERA RAO, Subordinate Judge, Ellore, to the Acting Under Secretary to Government, Legislative Department, dated Ellore, 24th November 1892, No. 540.

With reference to your letter No. 47, dated 31st August last, directing me to furnish my humble opinion on the subject of Hindu Gains of Learning Bill, I most submissively and respectfully beg to enclose herein a memorandum containing my views on the subject for being laid before His Excellency the Governor and the Members of the Council for their consideration.

Enclosure.

Memorandum of the Opinion of the undersigned with reference to the Hindu Gains of Learning Bill.

The speech of the Honourable V. Bhashyam Iyengar, B.A., B.L., is a complete exposition of the Hindu Law contained in various texts and commentaries as well as in the decisions of the highest Courts both in India and England.

Most of the texts referred to in the speech clearly laid down that gains of learning acquired at the expense of the members of the family or patrimony are divisible among the other members of the family. They are chiefly from the Smritis of Narada, Catyayana, Vyasa and Yajnavalkya, and also from the commentaries of Mitakshara, chapter I, paragraphs 5, 6 and 8, of Dayabhaga, chapter VI, section I, paragraphs 5, 16, 17 and 18, and also of Smruti Chendrika, chapter VII.

The old Smritis and commentaries of the highest authority above specified recognized the partibility of the gains of learning if such learning is imparted to the acquirer at the expense of the patrimony or of an undivided co-parcener; but the original texts are not uniform in defining the quality of learning. Some simply use the word "learning," while others distinguish it by calling it as "science" or "art." But I presume that such learning was meant to apply to superior education, but not mere rudimental or elementary.

The object of the Bill is doubtless praiseworthy and preventive of good many disputes which daily occur in Hindu families and conducive to the maintenance of peace and comfort in the family besides giving security to the acquirer. But at the same time it is, I apprehend, fraught with some mischievous consequences in another way and detrimental to the interests of the poor members of the family, if they should become unfortunately orphans at a season when they should be put to education and may prove a great drawback in the advancement of education in the Hindu society.

Parental exertions for educating children flow naturally from their very heart, and it is their very natural affection that prompts the parents to educate their children in the best way possible. It is equivalent to the suckling of the milk of the mother's breast. On the death of parents when the junior members fall under the protection of a uterine or step-brother or an uncle, the case would be different. If he is not allowed a share in the fruits of learning acquired at his expense, he would not care a pin if his brother or nephew is not educated whether he has patrimony or not in his hands. He may be inclined naturally to educate his own children and leave his brothers illiterate even when paternal funds are at his disposal. Instances are too numerous and can be found in our daily experience to convince us of a brother on growing old becoming an enemy to his junior brothers and trying to impoverish them by all possible means. Without an incentive of getting some gain for himself by the education of his junior brother or nephew, I am afraid, there is nothing to induce him to undergo the trouble of giving a liberal—nor even ordinary—education to him. When there are paternal funds at his disposal, a suit can be filed against the managing uncle or brother by a relative or friend of the family for providing him for the maintenance and education of the nephew or brother, but not in its absence.

I should like, therefore, to provide in the Bill that when a brother or uncle or other member of the family than parents should educate another member of it at his own expense without the aid of the patrimony, he should be allowed a share out of the acquisitions made by the acquirer of learning at his expense. When he receives his education at the cost of paternal estate, the other members need not be allowed a share of his acquisitions made by the learning.

Such education must be of a superior kind imparted at the brother's or uncle's expense, but not ordinary which can be had at any pial or charity school without much expense.

The case-law on the subject supports my view on this point, while some of the Smrutis and commentaries go in the same direction. The chief cases are Krishnaji Mahadev Mahajan *versus* Moro Mahadev Mahajan reported in Indian Law Reports, XV, Bombay, page 32; and Boologam *versus* Swarnam, Indian Law Reports, 4, Madras, page 330.

(Signed) M. B. SUNDERA RAO,
Subordinate Judge.

From M.R.Ry. K. P. SANKARA MENON, Vakil, High Court, to the Under Secretary to Government, Legislative Department, dated Mylapore, 25th November 1892.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following views on the proposed Bill "to declare gains of learning by a Hindu to be his separate property." I am sorry I was not able to do this earlier owing to my ill-health.

The conflicting opinions of Smriti writers and commentators and the decisions of Courts of Justice referred to in the statements of objects and reasons accompanying the Bill show clearly the present uncertain state of the law on the subject. The distinctions between general and special education and between ordinary and extraordinary gains of science are so fine and sometimes imaginary that they are practically unworkable, and as a necessary result a good deal of uncertainty as to their rights prevails among members of families which very often leads to untimely partition suits with all their baneful consequences.

The fetters that are put by Hindu Law on the disposition of joint family property, the rules against gift, devise, descent to personal heirs, or liability for individual debts after death though convenient and even necessary in an early state of society,

check individual effort and serve as a clog on the progress of the country. That these limitations should control the disposition of property acquired by a member of a family by his own exertions, natural gifts and opportunities well used, simply because he was educated at the family expense is certainly undesirable.

As regards persons governed by Marumakatayam law the evil is still greater, since under that law partition is not allowed. Even as regards self-acquisition, the power of disposition among these people is very much limited, being confined to alienations *inter vivos*, and though this measure does not confer any new rights of disposition over their self-acquired property, yet it in a measure promotes a greater circulation of property by taking self-acquisitions out of the category of Tarawad property.

It seems to me therefore that under the existing state of circumstances there is a real ground of complaint, and the passing of some such measure as the one under discussion will be a step in the right direction.

The cautious and carefully thought-out measure drawn up by Mr. V. Bhashyam Iyengar meets the difficulty without going too far. It does not deal with cases where joint family funds are the immediate cause of the acquisition nor to cases where self-acquisition is constituted joint property by the acquirer himself. It only extends to property acquired by special education the rule which may be taken to apply to property acquired by general education.

The objection that is often raised against the Bill is that it will deter the senior members of a family from imparting proper education to their juniors by taking away the prospective reward of sharing in the earnings of the latter. This, in my opinion, loses sight of the law as it is which allows partition at any time, and it also underrates the strength of family tie and affection that holds Hindu families together.

I believe that the present Bill, if it becomes law, will pave the way for the codification of other branches of Hindu Law in conformity with modern ideas and tendencies of Hindu society, and dispel the prevailing idea that places Hindu Law beyond the field of legislative control.

From Raja G. N. GAJPUTEE RAO, Vizagapatam, to the Secretary to Government, Legislative Department, dated Vizagapatam, 26th November 1892.

I beg to acknowledge the receipt of your letter, dated 31st August last, No. 47, forwarding copy of a Bill, with Statement of Objects and Reasons, to declare the gains of learning by a Hindu to be his separate property, which the Honourable V. Bhashyam Iyengar has introduced into the local Legislative Council, and asking for my views on the same.

It appears that the Calcutta and Bombay High Courts have ruled that the gains of ordinary education are impartible, while those of higher or special education are divisible in case the acquirer of wealth has received his education at family expense. From the remarks made by the Madras High Court in their judgment in the case of Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, page 320) in which the opinion of the Privy Council in the case of Paulium *versus* Paulium was quoted, it is probable that they will adopt the law of Bengal and Bombay in this respect in the Madras Presidency also.

The Bill, however, dispenses with all distinctions in the nature of education or training and declares the gains of all learning or training, whether general or special, to be the separate property of the person who may acquire the wealth. In many cases higher or special education is given at family expense for the express purpose of gain and for the benefit of the family, and often shared by the person who expends on one's education in the first instance and is a source of support to the family. Even the Dayabhaga, which is more liberal than other Hindu Law books in this respect, charge the wealth of a co-parcener with partibility when it may be acquired by science imparted at family expense purposely intended for the same.

In my humble opinion I think that the new measure may be confined to the limits now defined by the Indian Courts, that is to say, that the gains of elementary education will be impartible and those of higher or special education will be divisible among the co-parceners if the family stock has been expended for the purpose of education and not otherwise.

From M.R.Ry. A. VENKATARAMANA POI, Avargal, Subordinate Judge, Vizagapatam, to the Assistant Secretary to Government, Legislative Department, dated Vizagapatam, 28th November 1892.

As directed in your circular No. 47, dated 31st August last, I beg to submit herewith a paper containing my remarks on the "Hindu Gains of Learning Bill."

Enclosure.

Remarks on the "Hindu Gains of Learning Bill."

The Bill purposes practically to abolish the Hindu Law rule regarding the "Vidyadhanam" of members of undivided families and to declare that all such gains are impartible.

2. Assuming that it is either desirable or necessary to resort to legislation for the purpose of removing the uncertainty that undoubtedly exists as to what construction will be put upon the Hindu Law texts on the subject by the final Courts of Appeal, it is, in my humble opinion, inexpedient to declare that in no case shall that "Vidyadhanam" be partible. It is sufficient to adopt the more mediate view, in favour of which the Privy Council have expressed the bearing of the opinion in Pauliem *versus* Pauliem (Indian Law Reports, I, Madras, 252), viz., that the ordinary gains of science are impartible. "What is ordinary education?" is a question to which no general answer can be given. It must be answered with reference to the circumstances of each particular case. No statutory enactment can provide general rules which will be found applicable to the varying circumstances of Hindu families, but the difficulty, or even impossibility, of framing such rules affords, in my humble opinion, no justification for sweeping away the Hindu Law rule on the subject.

3. Next as to the necessity for the proposed legislation. In the case of Statute law, the Legislature does interfere to correct the evil of conflicting or glaringly incorrect judicial interpretations thereof by amending the Acts and declaring their real intention, but the Government has always been very reluctant to resort to legislation in matters relating to native laws and usages. It is only where the evil is of great magnitude that the Government undertakes to provide a remedy by legislation. In my humble opinion the evil now brought to notice is really not so great as to justify legislative interference with the Hindu Law on the subject.

4. As pointed out in the "Statement of Objects and Reasons" itself there are other rules of Hindu Law which are equally, if not more, injurious in their effects, *e.g.*, the rule which incapacitates a member of an undivided family to devise or to make a gift *inter vivos* of the whole or any part of his interest or share in the joint family property, and intercepts its descent to his personal heirs except his sons. The fact is, the average Hindu does not at all consider this result to be an evil. The very fact that in the case of "Vidyadhanam" "feelings of delicacy" deter many persons from seeking partition indicates that Hindu society in general considers it an act of selfishness on the part of the "man of learning" to attempt to exclude the rest of his family from its benefit.

5. The relief provided by the Bill is confined to the comparatively limited, and, under the influence of modern life, dwindling class of persons, whose "feelings of delicacy may postpone partition"; for, in the case of others, partition can put an end to "the uneasy feeling" as to whether their "Vidyadhanam" will be held partible or not.

6. No department of human concerns is free from uncertainty. In the Hindu society itself there are many points connected with their law of inheritance and property which are not yet set at rest by judicial decision. This is a necessary evil, and legislature cannot usefully interfere to abolish existing rules because they may produce hardship in particular cases.

7. Nor is the proposed law without its disadvantages. It is well known that many families with limited means manage to spend the best portion of their substance on the present-day education of one or more of their boys in the full expectation that his or their earnings will benefit the family. The Bill holds out a direct premium to heads of families to abstain from incurring expenditure on the proper education of the junior members. Where the head of the family is an uncle or other remote relation of the school-going members, their education will often receive but scant attention from the former.

From M.R.Ry. M. R. RAMAKRISHNA AIYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Vannarpet, 17th December 1892.

With reference to your letter No. 47, dated 31st August 1892, and reminders, dated 17th November and 5th December 1892, I have the honour to state that, owing to pressure of professional business in this part of the year, I have not been able to submit my reply as early as I should wish.

I shall send in my reply within ten days from this date.

From Diwan Bahadur P. SREENEVAS RAO, Avargal, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

I have the honour to submit my remarks on the "Hindu Gains of Science Bill" as directed in your letter of the 31st August last.

Enclosure.

Remarks of P. SREENEVAS RAO (Madras City Civil Judge) on the "Hindu Gains of Science Bill."

I am not in favour of this Bill. The Legislature has placed itself under the obligation of preserving the benefit of the Hindu Law to the Hindus in all matters concerning religion, caste, marriage, succession and inheritance. This policy was declared in the 21st year of the reign of King George III; and the Statute of 21 George III, Cap 70, passed in 1791, ordained in section 17 that, "in order that due regard may be had to the civil and religious usages of the natives (of India), it has been enacted that the rights and authorities of fathers of families and masters of families, according as the same may be exercised by the Gentoo (Hindu) or Muhammadan Law, shall be preserved to them within their families respectively; nor shall the same be violated or interrupted by the proceedings of the said Courts." This policy has been emphatically reiterated in all subsequent enactments and Letters Patent relating to India; as well as in Regulation III of 1793 of the Bengal Code, and in Regulation III of 1802 of the Madras Code, which latter provided (section XVI) that "in suits regarding succession, inheritance, marriage, caste, and all religious usages and institutions, the Muhammadan Law with respect to Muhammadans, and the Hindu Law with respect to Hindus, are to be considered as the general rules by which the Judges are to form their decisions." This is the law at the present day as declared in numerous subsequent enactments.

The law thus preserved to the Hindus being mainly founded upon religious principles peculiar to their sect, and the propounders of the law being influenced more by spiritual considerations than secular ones, this law differs from other laws in several important particulars. So that, unlike the laws of other countries, where ownership is generally single, independent and unrestricted, the rule in the Hindu Law is joint ownership; and the judicial authorities have invariably held that joint ownership is to be presumed in every case until the contrary is proved. Where such co-partnership has continued and the joint property been instrumental, in however small a degree, in the acquisition of the property a right to the benefit of each other's labours is quite incidental; the fruit of the labours of all the members of the family goes to the common stock; and if one of them is possessed of any aptitude for any particular kind of labour, his skill is exercised for common benefit. And for all this, he is in return rewarded by an interchange of similar good offices on the part of the other members; such as the improvement of the property by various means; the increased comfort of the family-home; the services rendered to aged parents and other elderly people in the family whom all the members are equally bound to protect; and, lastly, the spiritual benefit which some members endeavour to secure for the common welfare, while other members are engaged in secular affairs. And he is further compensated more substantially by other means also; thus, for instance, while the law places a member under the obligation by virtue of co-partnership to allow his father and brother to participate in his acquisitions, it confers upon him the right of participating in the property, which he never acquired, and which, according to other laws, would be considered to be the exclusive property of the father alone; an inchoate right originating in birth, and enforceable as against the father, even during his life-time.

Thus it will be seen that the Hindu Law is not arbitrary; but is based on principles of equality as to rights and obligations.

Further it must be remarked that the Hindu Law does not in the least ignore the right of any individual member to the *exclusive* enjoyment of his acquisitions, where they are made without the aid of the joint funds. The rule of law in this respect may well be stated in the words of the judgment of the Madras High Court passed nearly thirty years ago in what may be called the leading case on the point (Chalkonda Alasani *versus* Chalkonda Ratnachellam, Madras High Court Reports, II, 56), thus:—"The gains of science are devisible when such science has been imparted at the family expense, and acquired while receiving a family maintenance." This ruling seems to be the result of a correct interpretation of the laws extant on the subject, and appears to be quite just and proper. Mr. Justice Holloway in his judgment in the said case observes that "there seems nothing unreasonable in this provision"; and Sir Richard Couch, the Chief Justice of Bombay, following the said ruling of the Madras High Court, says: "Nor, having regard to the usages of the native society, do we think it is bad law." (Bombay High Court Reports, VI, Appellate, Civil, I).

Nevertheless it is quite possible that this rule may entail hardship in some cases; for, as observed by Sir T. Strange in his work on the Hindu Law, "the effect of the use of the joint stock in rendering separate acquisitions in general, common, is attended sometimes with injustice, where in cases of small patrimony large fortunes are made by the unaided exertions of enterprising parceners, of which benefit may eventually be shared by drones who have in no degree conduced to their accumulation. Nor, to obviate this, is there any resource, where timely separation has been omitted." And Sir R. Couch, in the Bombay case above noticed, says, "there may be hard cases, and the remedy for such is in the hands of the parties themselves, viz., to divide."

It is broadly hinted in the Statement of Objects and Reasons of the Bill under consideration that the rule of the Hindu Law above noticed may be disregarded, as it is based, not so much upon the original Smriti texts, as upon the authority of the commentators. But this, in my opinion, is not allowable; firstly, because it is not for us at the present day to impugn as unfaithful the construction put upon the law by those commentators whose authority has from time immemorial been recognised by the Southern Jurists without a word of demur; and, secondly, because, although the Smriti texts are of paramount authority, yet usage has interfered with the precepts of the Smritis, and time has rendered their language obscure, so much so that commentaries are now looked to as the true expositions of the law. "It is the opinion of the Southern Jurists," says Sir T. Strange on the authority of the great Sage Vrihaspati, "that text-books are not of themselves authority; and that the only authority in Hindu Law is to be sought in the later times in the conclusions and decisions of the authors of the several digests and commentaries, according to the schools to which they respectively belong." Here it is remarkable that the famous Mitakshara, which avowedly gives the law to the Hindus in Southern India, is nothing but a commentary of Vignana Yogi upon the original Smriti text of Sage Yagnavalkya; and the doctrine now under consideration is in accordance with that work.

From the above it will be seen that the rule under consideration is based upon fundamental principles of the Hindu Law, upon which the status of the Hindu society is established and maintained; and which the Legislature has declared it to be its policy to preserve intact; that such rule is quite fair and equitable; and that in case the practical working of the rule is likely to prove prejudicial to any individual member, the law has already provided a remedy for him, which he may exercise without infringing the general rule of law.

In respect to the law thus established, the legislative interference can hardly be justifiable, unless it is shown that there prevails an uncertainty in the practical working of that law, which cannot be removed but by the Legislature. The Bill under consideration is intended to apply to the Madras Presidency alone; and in this Presidency there is no uncertainty, but a perfect uniformity is observable in the course of the judicial decisions in favour of the doctrine now prevailing here. The leading case on the point is that of Chalkonda Alasani *versus* Chalkonda Ratnachellam, above referred to, which was passed by the Madras High Court so far back as 1864 (II, Madras High Court Reports, 56). This was followed in the case of Gungadharadu *versus* Narasamma decided by the Madras High Court in 1872 (Madras High Court Reports, VII, 47). And up to the present time these decisions have not been superseded or over-ruled.

It is said that in the said leading case there was a difference of opinion between the District Judge and the High Court. But a careful perusal of their decisions will show that they recognised the principle of law both alike, but only differed as to matters of fact as to what constituted the gains of science, as clearly observed by Mr. Justice Holloway in the same case. And in the second case above mentioned, Mr. Justice Kindersley remarked "it is impossible to read the authorities without concluding that the question must be upon the facts of each case how far the common family means were instrumental in enabling the professional man to earn the property." I do not think that the Legislature will consider it necessary to interfere in such cases, and lay down hard-and-fast rules in respect of a doctrine, whose practical application is variable according to the facts peculiar to each case.

I am aware that the course of judicial decisions is different in Madras from that in Bengal and partly in Bombay in this respect; but this cannot afford the slightest justification for altering the law in Madras. For the Hindu Law prevailing in Bengal varies from that in force in Madras, not only in this respect, but in numerous other and more important matters also. Thus, in Bengal, sons have not ownership in their father's property, ancestral or other, until after his demise, whereas in Madras sons can enforce partition upon their father during his lifetime. The father takes his deceased son's estate before the mother in Bengal, while the mother takes first in Madras. In Bengal the property of a man dying without male issue goes to his widow, whether he was or was not divided from his brothers; but in Madras the widow can only succeed in a divided family. This great divergence in the law is due to the corresponding divergence in the manners and customs of the people inhabiting the two Provinces, and to the different schools of thought followed by them. In such state of things, the Legislature would no doubt consider it not quite safe or expedient to attempt to alter the law in Madras to suit it to the views prevailing in Bengal in respect of the doctrine now in consideration or in any other respects.

In the case of Pauliem *versus* Pauliem which came before the Privy Council some years ago (Indian Law Reports, I, Madras Series, 252) a question was raised with reference to the doctrine under consideration, but was not decided. Their Lordships, however, passed an *obiter dictum* not quite favourable to the rule laid down in the Madras cases, and concluded by remarking that "it may hereafter become necessary for this Board to consider this doctrine." So then there is a prospect of the subject being conclusively settled by the Highest Tribunal when a concrete case may go before it in due course; and in the meantime it is also quite possible that the High Court in Madras may avail themselves of the dictum thrown out by the Privy Council, and alter the course of its decisions. Already we see some signs of a change in this direction; for in Boologam *versus* Swarnam (Indian Law Reports, IV, Madras, 330), the Madras High Court has shown a decided leaning towards the dictum of the Privy Council. It is only in this way that certain knotty points in the Hindu Law have been gradually set at rest,—as for example, the question whether the giving of the eldest or the only son in adoption was valid or not; whether the performance of the "homan" sacrifice was essential to a valid adoption, and so on. No interference of the Legislature was ever considered necessary for settling any and every arguable point in the Hindu Law or any other law.

In conclusion, I beg to point out that at present there is no question of laying down a new law. The question here is purely one of the interpretation of the existing law, and of its adaptation and application to the facts peculiar to each case, neither of which is within the cognizance of the Legislature.

From K. SHESHADRI IYER, Esq., Diwan of Mysore, to the Secretary to Government, Legislative Department, dated Madras, 12th December 1892.

In reply to your letter No. 47, dated the 31st August 1892, I beg to submit my views on the Bill introduced by the Honourable V. Bhashyam Iyengar into the Madras Legislative Council for declaring the gains of learning by a Hindu to be his separate property.

2. The ideas of joint family and the moral obligation of an earning member to support the unearning members are deeply rooted in the Hindu mind, and, as a matter of fact, the majority of earning Hindus of the present day actually support, often at the sacrifice of their own personal convenience, the uneducated and unearning members of their families and even distant relations having no legal claim on them. The earning member, however, not unnaturally feels it hard and unjust that the fruits of his own hard labour and professional skill should be claimed *as a matter of right* by persons who are far inferior to him in intelligence and industry and who are either unable or unwilling to contribute in any way towards the acquisition of the wealth in which they claim to participate. He would, in most cases, be found most willing and ready to assist his poor relations if the matter were left to his own good sense, natural affection and desire to win public esteem. On the other hand, to the man who is dead to the dictates of natural affection and the duties enjoined by the opinion of society, there is already, under the existing system, a ready means of escape, as he has only to take the precaution of having a division of family property effected when there appears a prospect of his attaining to wealth. The real sufferer under the existing system, therefore, is the educated earning man having a respect for the opinion of society and natural affection for his brothers and more distant kindred, who hesitates to resort to a division of family property, an extreme measure

which is highly distasteful to every Hindu, as it involves a severance from the rest of his family and renders him for all practical purposes, including those of religious ceremonial, an absolute stranger to them.

3. The popular opinion too, except in some remote rural tracts where the people still continue to live in the old primitive ways and are unaffected by the great inequalities of position and property caused by Western education, is, I believe, not against the spirit of the provisions of the Bill. For, as a matter of fact, at the present day earning members of families, though supporting those dependent upon them are willingly allowed to keep the great bulk of their gains as their own property and suits for partition of such gains are rare. The proposed legislation, therefore, is not, to my mind, so opposed to the feelings of the Hindu community as it may at first sight appear.

4. Under any circumstances it seems desirable that some action should be taken for the protection of the earning members who, in the present uncertainty of the law, as contained in the somewhat conflicting decisions of the High Courts on the subject, or in a state of doubt and indecision.

5. I am thus in favour of the proposed legislation, because—

(1) it will at once remove the existing uncertainty of the law on the subject;
(2) it is only just that the fruits of a man's labour should be declared to be his own; and
(3) it is expedient that such a declaration should be made as it will prove an incentive to further exertion to attaining to success in life.

From M.R.Ry. S. SESHAYYA, First Lecturer, Government College, Kumbakónam, to the Under Secretary to Government, Legislative Department, dated 12th December 1892.

In reply to your letter of the 31st August last, I beg to submit the following remarks:—

I concur with the Honourable V. Bhashyam Aiyangar in nearly all that he has said in his Statement of Objects and Reasons.

Admittedly the law of partition of the gains of learning is at present uncertain and is a source of most expensive and demoralizing litigation with Hindu families. The legislation now proposed will set the law at rest, and will, I am persuaded, have a salutary economical and moral effect on the Hindu community at large by compelling its members to greater self-reliance, thrift and industry than they are willing to practice at present. *Manu*, the ancient law-giver, observes that, by the division of one family into many families, *dharma* would multiply. The observation is true not only in the limited sense in which the word is interpreted, but is more true in the extended sense of the term including all a man's duties.

I do not believe that the proposed legislation will at all be repugnant to the feelings of the more thoughtful section of the Hindu community. Nearly all with whom I have discussed the question, including among the number several non-English-educated gentlemen, have expressed their approval of the Bill. The only objections that can be urged against it are:—

1*st*.—That a definite provision of law, which secures to members of undivided families the exclusive enjoyment of their gains of learning, may tend to weaken in those who are able to earn the sense of responsibility for giving, by education, or otherwise, a start in life to those of their nearest kinsmen—their brothers and cousins—who may be in need of it.

2*nd*.—That the head of a family may not, when the Bill should become law, take the same interest that he does now in the education of his sons, giving to the more gifted of them a high education at a great cost in the hope that the earnings of the more capable will be used for the support of all.

As regards the first objection, I beg to observe that, where the moral sense of responsibility is absent or weak, fear of law is not likely to create or strengthen it. At present, when the senior member of an undivided family is unwilling to educate or support the juniors, the treatment which he accords to them compels them to leave his home and they have to beg or borrow their livelihood.

Prospect of relief from law is a bait which, not infrequently, proves the ruin of those who are led by it into reckless borrowing and wasting of the precious years of youth. A compulsory law of division of property, which one regards as one's own by right of acquisition, must have a bad moral effect both on him from whom property is taken and on him to whom it is given. It checks the natural flow of brotherly affection and sympathy. The law, as at present administered, its uncertainties apart, by which the gains of learning are treated as partible like the ancestral and common property of an undivided family, is not at all conducive to domestic economy and peace.

As regards the second objection stated above, I believe that paternal interest and affection will survive all changes of law. Sensible fathers will continue to take in the education of their sons the same interest which they show now, be the law of partition what it may.

On these grounds I have great pleasure in expressing my cordial approval of the Bill brought forward by the Honourable V. Bhashyam Aiyangar.

I very much regret the delay in submitting this letter. The time gained has, however, enabled me to gauge local public opinion as best as I may.

From Rao Bahadur A. SABAPATHY MUDALIAR, Bellary, to the Assistant Secretary to Government, Legislative Department, dated Madras, 14th December 1892.

I beg to acknowledge receipt of your letter of the 31st August 1892 with enclosures *re* the "Gains of Learning" Bill. I regret I was not able to reply to it earlier owing to my absence from the town for some time and pressure of business.

In the first place, the Bill aims to declare all gains of learning by a Hindu to be his separate property, whether such learning has been imparted to him by any member of the family, or at the expense of the joint funds of such family. I think that when a family undertakes to educate a member, it does so with the hope of enjoying the reward of such education jointly with the acquirer; and the family entertains joyful hopes that the member who is so educated will in his future career better the circumstances of the family. And the member who receives education at the expense of family funds is in duty bound to be grateful to those who were the means of his obtaining knowledge. The cost of educating a member of a family is considered an investment, which should in its turn repay the capital with interest. It is not only money that has been spent in having the member educated, but there is also a deal of care and attention, whose value is inestimable. And there is also the great risk whether those interested members of the family who gave him the education would live long enough to reap the fruit.

Thus it will be seen that it is a most sacred duty on the part of the member receiving education that he should share his gains of learning with the other members of the family, as wisely provided for in the Hindu Law. Both as a matter of strict duty and benevolent charity, of which spirit the Hindu mind is so full, the gains of learning of one member has to be shared by all the other members.

The Bill now under consideration engenders selfishness and discards the tender filial and fraternal ties, and estranges such a member from all the rest of the family.

For the above reasons, I do not see the necessity for a Bill of the sort now proposed, and I do not therefore agree with the provisions of the draft Bill. It aims a blow at certain wise provisions of the Hindu Law and acknowledged by the Hindu community to be a blessing to all concerned.

From M.R.Ry. NYAPATHY SUBBARAU, Pantulu Garu, B.A., B.L., High Court Vakil, Rajahmundry, to the Chief Secretary to Government, dated Rajahmundry, 15th December 1892.

In reply to G.O., No. 47, dated 31st August 1892, I beg to state that I am not in favour of the introduction of the "Bill to declare the gains of learning by a Hindu to be his separate property." As I have no leisure at present, I propose to submit a full memorandum on the subject with my reasons by the 7th January 1893.

From M.R.Ry. R. RAMASUBBAYYAR, Madras, to the Secretary to Government, Legislative Department, dated Mylapore, 2nd January 1893.

In reply to your letter enclosing a "Bill to declare gains of learning by a Hindu to be his separate property," I have the honour to submit the following :—

I quite approve of the Bill and the necessity for passing it into law. One aspect of the question is that it is likely to cause harm by preventing the head of a family from investing family property on the intelligence of its more gifted members. This can seldom be so when the head is the father whose natural love and affection would scarcely require to be supplemented by any mere prospect of sharing in the gains of his sons. Brothers, uncles, &c., would, no doubt, stand on a different footing. But such cases are generally few and the advantages flowing from the present state of the law are far outweighed by the inconvenience and unpleasantness which take the shape of costly litigation and family quarrels and which arise from not having a settled rule as to who shall be entitled to the gains of one's own exertions. The beneficial result of the Bill would be most felt in deciding the relations between father and son. As the law at present stands, there are few fathers who have raised their material condition by their own exertions that can afford to tell their sons, without their being dragged into the most costly and annoying litigation, "you shall not have any of my acquisitions, as long as you are not prepared to conduct yourselves properly." Such a state of things must make the sons lazy and unself-reliant if not worse in many other ways. I think the time is come when every effort should be made to free the individual from the trammels of the family system.

From Rai Bahadur P. RANGANADA MUDALIAR, to the Chief Secretary to Government, dated Wexford House, Chetpat, 9th January 1893.

In reply to your letter No. 47, dated 31st August 1892, from the Legislative Department, requiring me to state briefly my views on "the Gains of Learning Bill," I have the honour to submit that I strongly approve of its main provisions. I consider it a matter of grave urgency that steps should be taken for reducing to a considerable extent the harassing and costly litigation in connection with self-acquired property. There is room for difference of opinion in regard to some kinds of self-acquired property, but as regards the property that a person acquires by means of his learning, there is among the educated classes of the community but one opinion, and that opinion is strongly in favour of declaring such property to be his own and not liable to be shared in by other members of the family. The distinction drawn between scientific education and general education, and that between ordinary gains of learning and extraordinary gains of learning, are so indefinite that they afford considerable scope for legal disputation. In the existing state of things among the Hindus, I think it right and desirable that every Hindu who acquires property by means of his learning should possess exclusive right to such property, should be entitled to make gifts out of it while living or to devise it as he chooses, and should have the satisfaction and the certainty that in case of his dying intestate, such property would descend to his personal heirs and not become the subject of expensive litigation.

The present uncertain state of the law has undoubtedly exerted a most demoralizing influence. It has been urged that the evil may be obviated by the person likely to make large acquisitions by means of learning going in for a division of property.

This is no doubt a possible remedy. But it is scarcely reasonable that a person who postpones such division should be made to pay a heavy penalty. And if self-acquired property of a certain kind belongs after such division exclusively to the acquirer and his heirs, the mere absence of a division cannot so totally alter the character of that property as to make it partible among brothers and cousins.

From Rai Bahadur P. RAMASAWMY CHETTIAR, to the Secretary to Government, Legislative Department, dated Madras, 9th January 1893.

I was duly favoured with your Circular No. 47, of the 31st of August last (with its enclosures), inviting my views on the "Bill to declare gains of learning by a Hindu to be his separate property," which the Honorable V. Bhashyam Aiyangar had obtained permission to introduce into the Local Legislative Council, and regret my inability to give the matter earlier attention.

2. The "distressing uncertainty" of this branch of the Hindu Law, which the Bill purports to remove, is not due to any very material difference of opinion either among the early text writers, or among the subsequent glossators, as to the fundamental basis of the law, which is but the equitable principle that patrimonial funds should not be utilized to the special advantage of any one coparcener more than that of any other, and that, if so used, it should accrue to the common benefit of all; but would seem to lie in the more or less liberal or conservative interpretations of the same text by different commentators and on the admixture of enlarged notions of equity manifested in Judicial decisions based on one or other of such interpretations.

3. However desirable the institution of such a uniform rule as is contemplated by the proposed legislation may be in the interests of the educated few, the scheme, while professing to revive the equitable and liberal law of the old Smritis, practically ignores *in toto* the commentaries, which in general have actually taken their places, are recognized as binding, some in one, some in other parts of India, and have been hitherto accepted as guide in all judicial decisions.

4. Even were it expedient so to disregard such commentaries, it is impossible to conceive how the terms of the Bill, by which gains made by reason of any kind of "education whether elementary, liberal technical or scientific and training of every kind which is usually intended to enable a person to follow any trade, profession or avocation in life" and acquired in whole or in part, with the aid wholly or partially of joint family funds, become the exclusive property of the acquirer, are in substantial accord with the original texts, which would never part with the fundamental principle above referred to, though some of the text writers concede a larger share to such gifted acquirer in consideration, probably, of the talent, intelligence and labour, which, perhaps, even more than patrimonial assistance, have contributed to the acquisition.

5. Such a radical character of the Bill is more likely to create further dissensions and misunderstandings than there are at present, than tend to promote cordiality of feeling so essential in aid of progress among members of joint families, to whose social usage the fabric of the joint family system is so well adapted.

6. Moreover, the ulterior object of the proposed measure of securing the gains to the personal heirs of the acquirer would be frustrated, unless the restrictions to which widows' rights are now subject were removed by a project probably involving revolutionizing one other branch of the Hindu Law.

From M.R.Ry. M. R. RAMAKRISHNA IYER, High Court Vakil, Tinnevelly, to the Secretary to Government, Legislative Department, dated Tiruchendúr, 12th January 1893.

I have the honour to submit the following on the Hindu Gains of Learning Bill.

There is a considerable amount of uncertainty in connection with this branch of the Hindu Law, and any measure that is calculated to minimize the litigation in respect

of acquisitions by learning, cannot but prove useful to the Hindu community. Towards the close of the Statement of Objects and Reasons, other cogent grounds have also been assigned by the Honorable Mover of the Bill and the force of many of them cannot be denied.

2. But the question is, whether it is necessary or even desirable that the Legislature should interfere in matters of this kind. This question is of far greater significance than would at first sight appear; for the measure proposed is much more than an authoritative interpretation of doubtful passages in Hindu Law—it is in fact an *alteration* or amendment (in form and in substance) of the Hindu Law as at present interpreted and understood.

3. We generally understand the original Hindu Law texts with the light thrown on them by the recognized commentaries, and without attempting to settle independently of these commentaries what the intention of the lawgivers was, it is enough to observe that almost all the recognized commentators (the author of the Mitakshara among them) are agreed, on the authority of the texts as interpreted by them, that acquisitions made by learning or science, where the same has been imparted at the expense of the joint family, are partible. This interpretation is only in conformity with the general principles connected with coparcenery, and the different High Courts have construed the law in the same way.

4. In this state of things the present Bill cannot but be regarded as an entire *alteration* of the existing Hindu Law on the subject, and as such is open to objection on general grounds.

5. Up to this time the Legislature has not materially interfered with the substantive law laid down by the Hindu lawgivers in regard to property, except perhaps in the two instances of Act XXI of 1850 relating to the inheritance of excommunicated persons, and Act XV of 1856 relating to widow marriages. These two exceptional cases stand on quite a different footing from the measure now proposed and are the natural result of the principle of individual liberty and religious toleration.

Such instances of legislation (including the Act for the abolition of slavery) have their foundation on much higher ground than what forms the basis of any particular system of law prevailing in any one country, and they are such that a Government like the British could not but have legislated sooner or later for settling the matters comprised therein.

The other pieces of legislation, such as the Indian Majority Act and portions of the Evidence Act and the like, do not affect the provisions of the Hindu Law in regard to the *rights* of persons as to property.

6. And the present Bill, if passed into law, would be the first instance of direct legislative interference with the existing Hindu Law.

7. I need hardly discuss the abstract proposition as to how extremely undesirable it would be for the Legislature to disturb the course of the existing law of the country, and I have only to observe here that we have to be more than ordinarily cautious when we remember that the institutions in which our legislators in general have been brought up are so different from the institutions of this country, and that even the principles of natural justice cannot be universally applied quite irrespective of the time-honoured institutions of a country and the accepted ideas and consciousness of the people.

Again when once we break through the existing law, there is no saying where we will stop. The Bill, if passed into law, would, I am afraid, form an *important precedent* for other alterations or amendments being sought to be effected in Hindu Law on some ground or other.

This is a state of things which would hardly be liked by the community in general, or even by the educated section thereof.

8. In regard to the present Bill, it has further to be observed that compelling a person to give his brother a share of the acquisitions by learning (which learning has been imparted at the joint expense) is not contrary to any principle of natural justice or equity. Referring to the law on this point, the Bombay High Court observe:* "Nor having regard to the usage of Native Society do we think it is bad law." Mr. Mayne also observes:† "If a member of a joint Hindu family were sent to England, at the joint expense, to be educated for the Bar or the Civil Service, it seems *fair enough* that his extra gains should fall into the common stock as a recompense for the extra outlay incurred. It might be assumed that when the outlay was incurred the reimbursement was contemplated."

* *Vide* 6, B. H. C. R., A. C., p.p. 1 and 6.

† Mayne's Hindu Law, Fourth Edition, section 259.

9. The justice of this provision of Hindu Law follows directly from the general law of coparcenery. Since no member of a joint family can say before actual partition is made that he is entitled to any *definite share* either in the corpus of the whole family property or in its profits, the family is not bound to spend any portion of the property for the sole benefit of any one member; and when any large sum is actually spent in giving special education to an individual member, the sum must be considered to be spent on that person as a member of the corporate unity, and the earnings of that member ought therefore to go to the corporate body. And no member can reasonably complain of being deprived of the fruits of his learning, for were it not for the joint fund of the whole family, there would have been no learning to bear fruit. Again as a matter of fact no such educated member remains undivided during the whole of his life.

10. And besides, a consideration of the present circumstances of the country necessitate the continuance of the existing law, notwithstanding that he may suffer certain disadvantages thereby. The country is poor, and it is well known that by far the greater portion of the people who are anxious to impart good education to their children are also comparatively poor, while education is becoming costly and proper education for any special profession is felt to be far more costly. In this state of matters it is idle to expect the parents or other relatives to spend any large sum of money for the education of a boy, unless they can entertain the hope that by that means the prospects not only of the particular boy but of the family as a whole will be improved; and in many instances it would not be considered a prudent expenditure (even where the parents are willing to spend) unles the whole family hopes to be benefited.

11. Moreover, the boys have very often to look to the care and good sense of their uncles and elder brothers for guiding their education, and even where the boys may be themselves anxious to obtain proper education eventually to fit them for any profession, they are simply helpless as they have no independent voice in a joint family. And it is extremely unlikely that the uncles or brothers would be disposed to spend money knowing fully well (and they must know, if the Bill should become law) that the whole of the acquisitions by learning are to go exclusively to the earning member *from the very moment such earning should commence.*

12. But it is said that however reasonable and just the hopes and expectations of the other members may be, they are under the existing law liable to be frustrated by the person to whom the learning has been imparted choosing to become divided from his coparceners as soon as he completes his education, and thus to appropriate exclusively to himself the fruits of his learning. This is no doubt *a possibility*; but it seldom so happens in actual practice. It is in such cases more than in others that the educated member experiences feelings of delicacy, which together with moral and other considerations, including the public opinion (so to say) of his own circle, are too strong for him to press for a division at once. Experience shows that the educated member generally waits for a few years before demanding partition, and the acquisitions or gains of science made in the interim naturally go to the whole family.

13. Granting for the sake of argument that instances of the educated members dividing off immediately on completion of education may *hereafter* become more frequent, how does the Bill better the present condition of things? Under the existing law we can at least trust to the good sense and feelings of delicacy and affection of the earning member for giving the family the benefit of the acquisitions by postponing partition for a time; whereas the Bill declares that from *the very commencement* the acquisitions are the exclusive property of the earning member though remaining undivided. No scope is given for the operation of the feelings of delicacy, of moral duty or affection or the like. Under such circumstances even the sense of moral duty will become blunted in this respect, and it is highly improbable that an earning member will, out of mere gratitude, give, that is, make a gift of, a share to his coparcener in what the law expressly declares to be exclusively his own.

14. Hence the effect of the Bill would be this. Because the existing law is unable to compel a few persons who have received education to assign a share to the coparceners that assisted them with their funds, we will enact another law *practically* making all or nearly all the persons receiving such education *not to give* any portion of their earnings to their coparceners.

15. As for the argument that under the proposed law the member acquiring by means of learning will postpone partition out of certain family considerations and there will be no room for discord and mistrust, it loses much of its force when we remember that the *other members* in management of the family property would then be more tempted to conceal the savings, &c., and where the estate is one likely to be improved or enlarged by their exertions, such members would divide off their shares instead of spending their energy upon the whole estate and giving the benefit of the improvements and accretions to the educated brother who is earning abroad solely for himself.

In addition to these cases of partition being expedited, there might also be cases in which one coparcener will demand partition even at the very time at which a large expenditure is sought to be incurred for the education of another coparcener.

16. Coming to the different kinds of special education or science, we find that all of them do not stand on the same footing. As we have special education for the law or medicine we may also have special training for agriculture, commerce and the like. But these latter require the continued use of substantial property (in the shape of land or money) for the special training or science to bear fruit, while the professions of law and medicine require little capital. Again a member who has made mechanical engineering his special study might think of setting up a mechanic's shop as being more advantageous than seeking for service under some one else, and this business also requires capital. In these and similar instances it would be more beneficial to the persons concerned and to the country itself that the special knowledge and skill should be exercised on the property (land or capital) of the family itself than that those who have acquired such special knowledge and skill should work on the land or capital of other persons. Besides, while we are complaining of the want of sufficient capital and of the minute sub-division of lands into small holdings—holdings too small in fact to enable us to carry out any substantial improvements—it is highly necessary that the persons who have received special agricultural, commercial or mechanical education should have for the exercise of their knowledge and training, at least the *whole* of the property or capital the entire family can command, rather than that the member so educated should divide off his own share and work upon it.

17. Agricultural education, commercial education and in fact all kind of industrial education, are now recognized as being essential for the development and advancement of the country, and instances of such education are sure to become much more numerous than at present; and yet, it is such education that is placed at a considerable disadvantage by this Bill, as compared with the education for the law or the medicine. For, as already stated, those to whom the former kind of special education has been imparted have, under the present circumstances of the Hindu community, to utilize the family property for the operation of their knowledge, and whatever may

be the amount of special knowledge and skill that contribute to the acquisition, the utilization of the patrimony is enough to make the *whole acquisition* partible among the different coparceners.

18. This portion of the existing law is left entirely untouched by the present Bill, which, if passed into law, would produce an anamoly. Suppose in a joint family of two brothers, the senior studies for the medicine, while the junior receives special education in agriculture or mechanical engineering; and suppose Rs. 4,000 is spent on each of the brothers; the senior would be allowed to appropriate exclusively to himself all his earnings, while the junior who has devoted the whole of his industry, intelligence and special learning and has probably doubled in value the family lands or capital would be compelled to share the same with the senior brother.

The other alternative would be to compel the younger brother at once to divide off his share of the property or capital and work in a small and narrow scale or what is more likely, to seek for the property or capital of some one else to turn his special knowledge to account. None of these states of things is desirable; and it would therefore be better not to disturb the existing law under which *all* the brothers who have received special education of *whatever kind* at the joint expense, will share in each others earnings so long as they remain undivided.

19. Objection is taken to the existing law on the ground that when the earning member attempts to divide "the other members who expect to share in the earnings naturally thwart the attempt by offering a passive resistance more effectual than active resistance." This is true enough. But there are other cases in which similar difficulty is felt, and yet we do not think of proposing a remedy by legislation. When in a joint family a brother or an uncle having no issue or having only daughters wishes to settle property upon his wife or daughters, the other brothers or nephews often offer the same kind of passive resistance, and the brother or uncle wishing to divide to enable himself to alienate his share is driven to a suit for partition as much as the earning member aforesaid, though in the case of this uncle or brother, the other members of the family can have no claim of any kind on him.

20. The objection to the existing rule, namely, that "it intercepts the descent of the acquisitions to the personal heirs of the acquirer, that it precludes the acquirer from making a gift or will in respect of them and disables his personal creditors from pursuing the same" are not really so many different objections, but are only the different phases or aspects of the single conception that the acquisitions are not the exclusive property of the earning member while he remains a member of a joint family.

21. One important effect of this new legislation upon the community at large would, it is submitted, be to obstruct the progress of all higher education, general and special, involving any large expenditure. This must be apparent from the facts stated above in paragraphs 10 and 11. In practical life we do not find many instances in the Hindu community of any large outlay being incurred to educate a boy, because education is in itself good, or merely for the sole benefit of the boy himself. Hindu society as a whole is at present very far behind this stage. And for want of funds or other grounds the Government are endeavouring to withdraw their aid from higher education. It is desirable therefore that we do not by any fresh legislation disturb the existing state of things and take away the main inducement in regard to education. Otherwise the loss to the community would be too great. Not only would there be a much smaller number of educated men in society, but the number of persons making large or handsome earnings would be considerably reduced, and there would be but few individuals who could with their special training in agriculture, engineering, industrial arts and the like assist in the development of the country's resources, not to mention other consequences of more or less importance.

22. The chief point in favour of the Bill is the uncertainty, justly called the "distressing uncertainty," of the law in deciding the nature and character of the education imparted. The Mitakshara does not expressly refer to special education or science, but more than ordinary education is implied as the *substantial and proximate cause* of the earnings can in this respect be nothing less than special education or

science. While I fully perceive there is "distressing uncertainty" in determining the character of the education, I submit we need not necessarily adopt *the present Bill* for removing the evils of such uncertainty. It might be said that there has been uncertainty in other branches of the Hindu Law and yet we have been looking only to the decisions of the High Court and the Privy Council for the removal of the uncertainty. As an instance reference might be made to the law of adoption in regard to the questions as to who may be adopted, and whether any and what ceremony is essential to validate the adoption.

Similarly it might be argued that in the present instance it might perhaps be preferable to trust to a course of judicial decisions for settling what ought to be deemed special education or science in the existing conditions of the society rather than invoke the aid of legislation for the purpose. But here we have an important and unique feature which distinguishes the present case from all others. While the uncertainty in regard to any question of law could be removed generally by single authoritative decision, we would require *a series of such decisions* of the highest courts to settle what kind or character of education ought to be considered special and not ordinary, the question though nominally one being so varied in character and so comprehensive in its scope. But waiting for *a series of decisions* means waiting for a long number of years and allowing the country to suffer in the interim the evils ensuing from conflicting decisions of Mofussil Courts. I therefore beg leave to suggest that the aid of the Legislature may be invoked to define, as far as possible, what ought in the modern condition of society to be considered as general, ordinary or rudimentary education, and what education regarded as special, scientific or technical. The distinction between the two classes of education is in the majority of cases well marked, and in no case can it be said to be too vague to be judicially recognized. But in view of the difficulty likely to be experienced by Mofussil Judges in cases regarded as doubtful, the Legislature may declare, so far as it may be feasible, what education is to be regarded as special, scientific or technical so as to serve as the substantial and proximate cause for earning. It may declare, for instance, what classes "of legal practitioners ranging from Barrister-at-law to Second-grade Pleader" are to be considered as having received special education or training.

23. A Bill framed with the above object would in no way be an attempt to *alter* the existing Hindu Law as laid down in the original text or commentaries, but would merely be *an explanation* or *amplification* of its provisions on a matter on which the law is silent. Such a measure would in the language of the Bombay High Court be "only adapting the texts to the condition of modern Hindu society."

While the Bill now under consideration removes the uncertainty by altogether ignoring or abolishing the distinction between ordinary and special education, the measure above suggested would recognize the distinction and avoid the uncertainty by *defining* the two kinds of education and including the doubtful cases in one kind or the other. Such a measure would not be open to the objections already stated in reference to the present Bill.

24. If it should, however, be thought that such a measure is not at all feasible, we must remain content till *a course of decisions* of the highest tribunals should set the question at rest.

25. Even if the present Bill should become law, there is no reason why it should be made *retrospective in effect* by affecting the acquisitions of learning made prior to the passing of the law.

26. In conclusion I beg to summarise my views as follows :—

(1) The Bill is much more than an adaptation of the Hindu Law texts and commentaries to the condition of modern Hindu society, and is really *an alteration* of the existing Hindu Law on *Vidyadhanam*, as laid down by the Smriti writers and recognized commentators and as interpreted to us by the High Courts.

(2) On general grounds, it is not desirable that the Legislature should interfere with the course of the Hindu Law in regard to private property; and even if it should be conceded that such interference is permissible when rendered absolutely necessary by exceptional circumstances, such exceptional circumstances do not now exist.

(3) Not only the existing law seems reasonable in a community governed by the law of coparcenery (paragraphs 8 and 9), but a change in the law will, under the present circumstances of the country, materially obstruct the progress of all higher education, general and special, and hinder the advancement of the society and the development of the country's resources (paragraphs 10, 11 and 21).

(4) We cannot be sure that the change proposed will secure on the whole the prevalence of good feeling and postponement of partition among coparceners to a *greater extent* than we find at present (paragraphs 12 to 15).

(5) The Bill seems to favour only certain classes of special education, namely, education for the Bar, the Medicine, Civil Service and the like, and places at a disadvantage those kinds of special education and training such as education in commerce, agriculture and the industrial arts that are essential for the development of the country (paragraphs 16 to 18).

(6) There is a great deal of uncertainty in determining the nature and character of the education imparted, and the question being too varied in its aspects and too comprehensive in its scope to be settled authoritatively by two or three Judicial decisions, it is highly desirable that the Legislature should define and declare so far as it may be feasible, what ought in the modern condition of society to be considered as *general*, *ordinary* or *rudimentary* education and what education regarded as *special*, *scientific* or *technical*. Such a measure would remove the existing evils and leave the Hindu Law as it is.

(7) And even if the present Bill should become law, it ought not to be made to affect the acquisitions made *prior* to the passing thereof (paragraph 25).

From the Honorable Sir T. MUTTUSAMI Aiyar, K.C.I.E., to the Chief Secretary to Government, dated Madras, 17th January 1893.

With reference to your letter No. 47, dated 31st August 1892, I have the honour to submit the following remarks on the Bill introduced by the Honorable Mr. Bhashyam Aiyangar relating to what are called in Hindu law gains of learning or science.

The educated classes consider the proposed legislation necessary and on this point there is a concensus of opinion amongst them. Even the orthodox section of the Hindu community are not much against it since what is proposed to be effected by legislation may now be secured by partition. Although a coparcener may not share with his co-heirs what he earns by his learning, yet he may often assist them in several other ways from family affection so long as he continues in the joint family. Whilst therefore, it is their interest that he should continue in the co-parcenery family, the present state of the law tends to force partition on him unless he is prepared to share with others the fruits of his learning. It is a rule of general jurisprudence that what one earns by his own unaided exertion is his exclusive property and the Hindu Law recognizes it except, as will presently appear, so far as it relates to gains of learning. Apart from these considerations it is to be observed that the law relating to gains of learning is a branch of the law of self-acquired property in a joint Hindu family. Whenever some property other than gains of learning is claimed to be self-acquired in a partition suit, we inquire whether the acquisition was made by the claimant by his own exertion or with his own earnings or whether his co-parceners assisted him or joint property was used in making the acquisition. In the one case we pronounce the property in dispute to be self-acquired and not partible and in the other we hold that it is joint and partible. But we do not inquire whether the acquirer or his wife was maintained in the joint family or from joint property when he made the acquisition nor do we treat any aid rendered to the acquirer material unless it is directly instrumental in acquiring the property and becomes thereby a joint cause of the acquisition. The proposed legislation, therefore, only places gains of learning on the same footing with other descriptions of self-acquired property.

I shall now proceed to consider on what foundation the Hindu Law rests so far as it relates to the conditions mentioned in section 3 of the Bill subject to which gains

of learning are now treated as separate property and whether it is expedient to repeal those conditions. The Smrities, the commentaries and the decisions bearing on the subject are cited by the Honourable Mr. Bhashyam Aiyangar in his speech in the Legislative Council and it is hardly necessary for me to recapitulate except for the purpose of indicating the conventional family notions embodied in them.

There are three classes of Smrities which bear on the subject and the first of them shows how the notion of self-acquired property attained development under Hindu Law. The modern joint Hindu family was once patriarchal in its type and the prevalent family notion was that the head of the family was the absolute owner of all that belonged to it, and that what each member of the family acquired by his own exertion belonged to its representative. In a Smriti attributed to Menu, the wife, the son and the slave are said to have in general no wealth of their own and what they acquire is declared to belong to the person to whom they belong. At this period no notion of self-acquired property was possible.

The patriarchal family, however, since ceased and the introduction of the law of partition changed it into the joint family. The first indulgence shown to the person who acquired property by his own exertion in such family is indicated by the text of Vasishta which says. "If one of the brothers acquires property by his own exertion, let him have a double share." The next change of the family notion is indicated by a Smriti attributed to Viyasa who states: "That brothers participate in that wealth which one of them gains by valour or the like, using common property such as a vehicle or weapon." At this time the family notion was that what a co-parcener acquired by valour was his exclusive property, but that the slightest assistance received from family property was sufficient to make it partible.

In consequence of the predilection felt in archaic times for the joint family, family property was guarded with extreme jealousy and it was even seriously discussed whether being nursed by a common mother and using a family plough rope was not sufficient aid from a family source. Another class of Smrities indicates a further stage of development. In the first paragraph of his text, Menu places property acquired by learning in the same category in which he places a gift from a friend and a present received on marriage, and in the second paragraph, he lays down the general principle in these terms: "What one brother may acquire by his labour without using the patrimony, that is an acquisition by his own effort and he shall not share it with his brothers except by his own choice". Yangyavalkya on whose Smriti the Mitakshara, which is the leading commentary in this Presidency, is based, expresses the same opinion and observes after referring to family property, "whatever else is acquired *apart from and without detriment to the paternal estate* as a friendly or nuptial present does not belong to the co-heirs. Nor shall he give up to his co-parceners what has been gained by science." It has been held upon the authority of these Smrities that the use of patrimony contemplated was a substantial use and one which was directly instrumental in the acquisition of the property. This is the furthest development which the law of self-acquired property has attained in a joint family and the Bill does not go beyond it.

There is another class of Smrities which it is necessary to mention in relation to gains of learning, viz., the texts of Catyayana, Narada, Brihaspati and Gautama. The text of Catyayana is full and it is sufficient to refer to it alone. Catyayana lays down three principles and first excludes what is gained by learning imparted in the family or acquired whilst being maintained by the family from the definition of gains of learning. The second principle is that what is gained by superior learning or superior skill or merit is separate property. The third principle is that a learned co-parcener need not share his gains by learning with his *unlearned* co-heirs. It is in this Smriti that the receipt of maintenance or instruction from the family is treated as making gains of learning partible property, but Catyayana limits that rule to ordinary gains by declaring that wealth gained by superior learning, merit or skill, is exclusive property and by making even the ordinary gains partible with other *learned* co-heirs only. From the instances he gives, he evidently refers to what was then considered among Brahmins to be special earnings of learning. Reading the Smriti in the light of usage which prevailed at that time, the text is clear and intelligible. Professions

were then hereditary under the rules of caste, and several brothers, living together and receiving instruction from their father or uncle or another brother, followed a common caste profession, treated what they earned by the ordinary exercise of the family profession as partible amongst them, but treated the special earnings mentioned in the Smriti as their exclusive property. It is apparently with reference to this usage that Catyayana made a distinction between ordinary and special earnings of learning and treated the latter as separate and the former as partible property. He declared the principles mentioned above applicable to all elegant and liberal arts and also to cases in which there was only an increase of price by superior skill. Thus, if an article was made to order, its ordinary price was considered partible because it was made with the aid of knowledge imparted in the family, whilst any excess price or reward given on account of superior skill in making it was declared to be separate property. This shows that what Catyayana intended to do was to declare all special earnings, whether due to superior learning or superior skill or merit to be separate property because such learning, skill or merit was in his opinion personal and to declare in deference to the usage all ordinary earnings due to the exercise of the common caste or family profession partible, unless the learning necessary to the exercise of that profession was imparted and maintenance was provided by a stranger as was occasionally the case. The Bill purports to acknowledge the first rule and to repeal the second and the usage on which the second rule was founded has now undergone a considerable change. Professions are no longer hereditary as was formerly the case and the influence of caste in this respect has passed away except perhaps among artisans and mechanics. Even amongst them the proposed legislation will not be unpopular since they generally work separately when there is considerable inequality in their earnings. In an orthodox Brahmin family, different brothers now follow different professions and there is a considerable disproportion between their earnings. This renders a rule originally applied to the ordinary earnings of the profession prescribed for each caste inapplicable to the altered state of things. Testing the Bill by the Smrities, I come to the conclusion that the proposed legislation proceeds on the lines indicated by the Smrities, adapting them to the altered conditions of life and that so far as the Bill repeals the limitations mentioned in section 3, it repeals only such Smrities as are probably referable to a period, when owing to the strong predilection for joint family, even slight aid from the family or its funds was considered sufficient to make gains of learning partible. The Bill proceeds also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *v.* Poliem Suria Chetty that the proposition of Hindu Law put forward before their Lordships was startling and that in plain terms, it amounted to this, that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property.

Though this is only a dictum of the Privy Council and though the Judicial Committee did not consider it necessary in the case before them to examine the texts, yet it shows how the second rule of Catyayana now operates in practice. It must, however, be stated that there is some authority for the proposition animadverted upon by the Privy Council in the Mitakshara. In chapter I, section IV, v. 8, the author relies on the texts of Narada and Catyayana and adopts the rule of Catyayana that unless wealth is gained by science which was acquired from a stranger while receiving a foreign maintenance, it is not an acquisition through learning. It was this passage in the Mitakshara and the Smrities mentioned therein on which the decisions in Madras and Bombay had rested prior to the date of the Privy Council decision. I have, however, explained that this rule originally had reference to those cases in which the gains of learning were ordinary and acquired in the exercise of the prescribed caste profession, no superior learning, skill or merit being the cause of the acquisition. The author of the Mitakshara himself refers in support of his opinion to "received practice." The Bill then, so far as it departs from the Mitakshara, refuses only to give effect to a rule, which, as applied to the altered present state of things, is characterized by the Judicial Committee as a *startling* proposition of law.

In the cases decided by the Bombay High Court and the Madras High Court subsequent to the decision of the Privy Council, it has been ruled that mere rudimentary or ordinary education imparted at the expense of the family cannot render what

was acquired by learning by one of them partible and thus effect has been given to the observation of the Privy Council. The decision of the Bombay High Court, however, indicates a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu Law. What Catyayana says is that the ordinary gains of learning are *partible* when the learning is imparted in the family or maintenance is provided at the family expense, whereas what the Courts hold in deference to the dictum of the Privy Council which embodies a rule of reason rather than the conventional notion of the Hindu Law, is that such gains are *separate* property. Again Catyayana says that special gains by superior learning, superior skill or superior merit are separate property; but there are observations in the decision of the Bombay High Court which indicate an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter *prtible*. There is therefore ground for the assertion that the tendency of the decisions of Courts is to proceed in a direction which is the very reverse of what is indicated by the Smriti of Catyayana and to make the law more complex in its application.

The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning, by bringing it into accord with the general law of self-acquired property in a joint Hindu family without at the same time doing violence to the spirit of Catyayana Smriti, but only adapting it to the altered state of things.

Order—No. 13, Legislative, dated 22nd February 1893.

The replies received from the various gentlemen consulted and certain petitions concerning the Bill which have been received by Government will be referred to the Honourable V. Bhashyam Aiyangar, Rai Bahadur, with the request that he will favour Government with such remarks upon them as he considers necessary.

(True Extract.)

A. BUTTERWORTH,
Ag. Under Secretary.

To the Honourable V. Bhashyam Aiyangar, Rai Bahadur.

Read—also the following paper:—

From the Hon'ble V. BHASHYAM AIYANGAR, to the Assistant Secretary to Government, Legislative Department, dated Madras, 6th January 1896.

I have the honour to acknowledge receipt of Proceedings of Government, No. 13, Legislative, dated 22nd February 1893, and to submit the following remarks on the replies received from the various gentlemen consulted and certain petitions concerning the Gains of Learning Bill. The names of the gentlemen and associations that are in favour of the Bill, as well as of those who either are opposed to the Bill or deem it unnecessary, are given below:—

For the Bill.

		Pages of the Procs. of Govt.
(1)	The late Justice Sir T. Muthusawmy Iyer, High Court Judge, Madras	55 to 58
(2)	The Hon'ble Justice S. Subrahmania Iyer, C.I.E., High Court Judge, Madras	24
(3)	Sir K. Seshadri Iyer, Dewan of Mysore	45 & 46
(4)	Dewan Bahadur R. Raghunatha Rao, late Dewan of Indore and retired Deputy Collector, Madras	9
(5)	The Hon'ble Dewan Bahadur S. Srinivasa Raghavaiyangar, C.I.E., Inspector-General of Registration, Madras	16
(6)	Dewan Bahadur T. Venkasamy Rao, retired First Assistant, Revenue Secretariat	15

		Pages of the Procs. of Govt.
(7)	The late Rao Bahadur P. Runganadha Mudelliar, M.A., Professor, Presidency College, Madras	48 & 49
(8)	M.R.Ry. A. Ramachandra Iyer, Judge, Chief Court, Mysore.	27 & 28
(9)	Rao Bahadur S. Seshayya, Professor, Kumbakónam College, and Tamil Translator to Government	46 & 47
(10)	Rao Bahadur R. Rama Subba Iyer, High Court Vakil, Madura	48
(11)	Rao Bahadur C. Gopala Nayar, Subordinate Judge	28 & 29
(12)	M.R.Ry. P. Somasundaram Chettiyar, late President, Pachaiyappa's Board of Trustees	8
(13)	M.R.Ry. K. C. Manavedan Raja, Statutory Civil Service	15 & 16
(14)	Dewan Bahadur R. Dhurma Rao Naidu Garu, Deputy Commissioner, Salt and Abkári, Northern Division	25
(15)	M.R.Ry. Rama Varma Raja, Raja of Parapanad	8
(16)	" S. Gopalacharriar, Subordinate Judge	12 & 13
(17)	" D. V. Ramayya Pantulu Garu, Government Pleader, Berhampur	18 & 19
(18)	" C. Sury Iyer, retired Subordinate Judge	19 & 20
(19)	" V. Jagannatha Rao Pantulu Garu, Deputy Collector	21 & 22
(20)	" V. Rajagopala Charriar, Deputy Collector	30 to 32
(21)	" S. Kalyanasundaram Chettyar, Deputy Collector	32 & 33
(22)	" T. Pattabhi Rama Pillai, retired Deputy Collector.	33 to 35
(23)	" V. Srinivasacharlu, Subordinate Judge	35 & 36
(24)	" S. Narayanaswami Chettyar, Dewan of Venkatagiri Samasthanam	36 & 37
(25)	" M. Srinivasa Rao, Deputy Collector	37 to 39
(26)	" M. V. Sundara Rao, Subordinate Judge	39 & 40
(27)	" K. P. Sankara Menon, High Court Vakil, Madras.	40 & 41
(28)	Citizens of Madras	3 & 4
(29)	Literary Association, Cocanada	1
(30)	Berhampur Association	2
(31)	Coimbatore Bar Association	3

Against or not in favour of the Bill.

(1)	M.R.Ry. P. Chentsal Rao Pantulu Garu, C.I.E., retired Superintendent of Stamps, Madras, and late Councillor of the Council of the Maharaja of Mysore	25 to 27
(2)	" A. Seshiah Sastriar, C.S.I., Retired Dewan of Travancore and Dewan-Regent of Pudukkóttai	37
(3)	" C. Ramachandra Iyer, retired District Judge	29 & 30
(4)	Raja G. N. Gajapathi Rao, C.I.E.	41 & 42
(5)	Dewan Bahadur P. Srinivasa Rao, Judge, City Civil Court, Madras	43 to 45
(6)	Rai Bahadur A. Sabapathy Mudelliar, Bellary	47
(7)	Rai Bahadur P. Ramasamy Chettyar, Revenue Officer, Madras Municipality	49
(8)	The Hon'ble N. Subba Rao Pantulu Garu, High Court Vakil, Rajahmundry	48
(9)	M.R.Ry. A. Sankariah, retired Dewan Peishcar, Cochin	1
(10)	" K. Krishnaswamy Rao, Chief Judge, Travancore.	9
(11)	" C. Nagoji Rao, Inspector of Schools of Rajahmundry	9 & 10
(12)	" P. Pundarikkashudu Garu, Deputy Collector	11 & 12
(13)	" K. Subba Rao Pantulu Garu, Deputy Collector	13 & 14
(14)	" Rao Bahadur C. Venkoba Charriar, Subordinate Judge	20 & 21
(15)	" R. Subramania Iyer, District Registrar	22 to 24
(16)	" A. Venkata Ramana Pai, Subordinate Judge	42
(17)	" M. R. Ramakrishna Iyer, High Court Vakil, Tinnevelly	49 to 55

It will be observed that twenty-seven gentlemen and four associations support the Bill and seventeen gentlemen oppose the same or do not support it. In the Statement of Objects and Reasons appended to the Bill, as well as in my speech while introducing

the Bill, I have fully explained the Smriti law as well as the case law on the topic of gains of learning and showed how impracticable it would be to decide, in each particular case as it arises, whether the education by means of which property was acquired by a Hindu was ordinary or scientific, and how problematical it would be to decide in the great majority of cases, years after the completion of the education and even after the death of the individual, whether such education was imparted to him wholly or to what extent with the aid of family funds. I have also endeavoured to show that the proposed measure is in conformity with the Smriti or original sacred law on the subject, and that its primary object is to remove the existing uncertainty in the application of this branch of Hindu law. I beg to invite special attention to the opinion on the Bill recorded by the late Sir T. Muthuswamy Iyer. He points out that according to some of the original Smritis, the use of patrimony contemplated for the acquisition of learning was a substantial use and one which was directly instrumental in the acquisition of property. Referring to the text of Catyayana, he points out that gains of ordinary learning imparted in the family or acquired whilst being maintained in the family are partible, but that what is acquired by means of superior learning or superior skill or merit is separate or exclusive property of the acquirer, because such learning, skill or merit was, in the opinion of Catyayana, personal. Testing the Bill by the Smritis, Sir T. Muthuswamy Iyer says that it proceeds on the lines indicated by the Smritis, adapting them to the altered conditions of life, and also on the lines indicated by the observations of the Privy Council in Poliem Velu Chetty *v.* Poliem Suria Chetty, that the proposition of Hindu law put forward before their Lordships was startling, and that in plain terms it amounted to saying that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring, by his own skill and industry, any separate property; and the Bill, so far as it departs from the Mitakshara, refuses only to give effect to a rule which, as applied to the altered state of things, is characterized by the Judicial Committee as a startling proposition of law. The observation of the Privy Council in the above case is only an *obiter dictum*, though effect has been given to the same, to a certain extent, in one or two subsequent decisions, by the Bombay and the Madras High Courts. Referring to these decisions, and particularly to the decisions of the Bombay High Court, Sir T. Muthuswamy Iyer observes that they indicate a tendency to introduce a distinction between ordinary and professional learning for which there is no sound foundation in Hindu law, and an inclination to divide learning into rudimentary and professional or superior learning and to make gains accruing from the latter partible and thus to proceed in a direction which is the very reverse of what is indicated in the Smriti of Catyayana and to make the law more complex in its application. In conclusion, Sir T. Muthuswamy Iyer says as follows:—

"The Bill now before the Legislative Council will, if passed into law, remove the uncertainty that now exists and simplify the law relating to gains of learning by bringing it into accord with the general law of self-acquired property in a joint Hindu family, without, at the same time, doing violence to the spirit of the Catyayana Smriti, but only adapting it to the altered state of things."

It will thus be seen that, according to the texts of Hindu law, the preponderance of authority is that the gains of ordinary learning is partible, but that the gains of superior or scientific learning are separate and impartible. This, in fact, was the view taken by the High Court (Holloway and Kindersley, J.J.) in the case reported in VII Madras High Court Reports, page 47; but the tendency of the later decisions is just the reverse, viz., that the gains of ordinary learning are impartible but that the gains of superior or scientific learning are partible. Considering, however, that the question has not yet been judicially considered by the Privy Council, it cannot be said to be unlikely, having regard to the texts of Hindu law, that the contrary view might hereafter prevail. This only shows how uncertain the present state of the law is on a question of the highest practical importance to Hindu families, and I may observe that the opinion of several who are opposed to the Bill proceeds on a misapprehension of the written law and of the case law on the subject. It is unnecessary that I should repeat here the reasons and objects of the Bill, which were fully stated and explained when the Bill was introduced, or the reasons assigned

in support of the Bill by the gentlemen and associations that are in favour of the Bill, and I shall confine my remarks to the specific objections that have been raised to the Bill by some of the gentlemen to whom it had been referred for opinion. These objections may be summarised as follows:—

(i) That legislation on questions of Hindu law is objectionable and undesirable.
(ii) That the existing law provides a remedy by enabling any member of an undivided Hindu family to become divided if he be disposed to do so, and that the proposed legislation is unnecessary.
(iii) That heads of joint Hindu families will neglect the higher education of their minor brethren.
(iv) That the measure will lead to the breaking up of joint Hindu families.

(i) As regards the first objection, I have only to refer to the note appended to my letter, dated 2nd May 1892 (printed at pages 5 to 8 of the Proceedings of Government under reply), in which I have expressed my views on the question as to the direction which legislation should take in matters of Hindu law and on the advantages and desirability of piece-meal legislation from time to time on different topics of Hindu law which are of the gravest practical importance and which, owing to their vagueness and uncertainty, open a wide door to unnecessary speculative and ruinous litigation, and that, having regard to different schools of Hindu law which prevail in different provinces and the difference in the conditions and sentiments of Hindu society in various provinces, provincial legislation is the only scheme which will be found practicable for the present and until a general codification of the Hindu civil law, with special chapters for special provinces, is found feasible.

(ii) The second objection is based on the provision of the Hindu law that any member of an undivided Hindu family may, as of right, become divided from the rest of the family, and that, by the exercise of such right, all acquisitions made by him after his separation from the family will become his exclusive and separate property. In cases in which all the members of the family voluntarily agree to all, or some, or one of them becoming divided, there will be no difficulty in one availing himself of the remedy. But in the very case in question—viz., of an earning member desiring to become divided—it will be the interest of the remaining members to obstruct and passively resist such a member from separating himself from the rest of the family: and the supposed remedy can be availed of only by an expensive and protracted law suit for a partition, until the final termination of which the status of the family as undivided will continue. A rule of law which is to be regarded as providing such a remedy can only have a tendency to force a member of a Hindu family to become divided, when otherwise he may deem it undesirable to do so. An earning member so long as he continues in the joint family and is not forced to become divided will materially assist the other members of the family in various ways, although they may not be entitled to claim a share in what he earns by his learning. If a choice were given to Hindu families between an earning member of that family becoming divided and his remaining a member of the family having exclusive right to his own earnings by learning, undoubtedly the option will invariably be exercised in favour of the latter. In this connection I may observe that the relative position between a Hindu father and his undivided sons is the same as that between undivided brothers, cousins, uncles and nephews, &c.; and if a Hindu father wishes to have full control over his professional earnings and not be at the mercy of his sons in disposing of the same in favour of his wife, daughters or other relations, he should become divided from each of his sons soon after their birth. In truth, the supposed remedy is only a theoretical one and is worse than the disease, and, such as it is, it would be availed of more than it has been if there was any certainty or definiteness in the law that earnings by means of learning are partible. I may in conclusion add that, in the case of Malabar tarwads, even such a theoretical remedy does not exist.

(iii) The objection on the score that the proposed measure is calculated to affect prejudicially the cause of higher education in Hindu families is ingenious and fanciful, rather than real. It is admitted that, under the existing state of the law, a Hindu youth who has acquired superior and professional learning at a considerable cost to the joint family may separate himself from such family soon after he begins

to earn by means of such learning, and yet such law has in no way deterred heads of joint families from educating at a great cost to the family, up to a high standard, such of the junior members as show an aptitude for such superior or scientific learning. If, under the existing law, earnings by means of ordinary or rudimentary learning are not partible, but belong exclusively to the acquirer, it may be with just as much force argued that the tendency of the recent decisions is to affect prejudicially the cause of primary or elementary education in Hindu families. Such reasoning, whether in the case of elementary or higher education, proceeds on the assumption that heads of families are actuated by a mercantile spirit in spending family funds for the education of junior members. Every family will feel proud of one of its members attaining eminence in any walk of life and the whole family will, in the vast majority of cases, be benefited in various ways by the success in life of one of its members, though they may not be entitled to claim a share or an equal share in the earnings of such member. It is a libel on human nature to suppose that in domestic and family relations, men are chiefly actuated by mercenary and sordid motives. In countries where the joint family system of the Hindus does not prevail, parents, brothers and other close relations are found generous enough, at a great cost to themselves, to secure the highest education possible to their children and other relations, though they do not dream of claiming any share in the acquisitions resulting from such learning; and is it to be imagined that among Hindus, domestic affection and generous impulses towards members of their families are less strong than in other nations?

(iv) The last objection to be noticed is, that the measure is likely to lead to the breaking up of joint families. If that will be its effect, I know there are some who will welcome such a result. But, for my own part, I may state without hesitation that I am not prepared in the present state of the Hindu society to suggest or advocate any measure which would in any way be calculated to cause disintegration of the joint family system. Apart from what may be urged *pro* and *con* on such a question on economic and other grounds, it is enough to say that such a change will, at present, be revolutionary and out of the question. The existing system of joint Hindu families admits of, and has for ages admitted of, individual members thereof possessing self-acquired property which, being his separate and exclusive property, can be dealt with as he pleases, and which, in the event of his dying intestate, does not merge in the joint property of the family (except in the case of Malabar tarwads) but devolves by inheritance upon his separate heirs. The Bill introduces no change whatever in the joint family system and it only declares and defines one class of self-acquisitions, viz., acquisitions by means of learning. How this measure can in the least produce the apprehended result of breaking up the joint family system surpasses one's comprehension! If anything, it will have just the opposite effect, by not forcing a member of an undivided family who, by his learning, earns a great deal more than the other members, to break up the joint family and become divided in order that his future earnings may belong to him exclusively.

It is impossible to conceive any case in which a person, who, under the existing state of the law, would be content or elect to remain a member of a joint Hindu family, would be induced by the proposed measure to become divided from such family. On the contrary, I can well conceive of several cases in which a person who may, under the existing state of the law, be forced to break up the joint family and become divided if he wishes to have sole control over his acquisitions, would, under the proposed measure, not be obliged to take such a step, but might well be content or elect to remain a member of the joint family, in cases in which there may be hardly any patrimony to be divided, or the property to be divided may be very small, or for other reasons, the breaking up of the family may be undesirable. One or two objecting to the Bill do so on the ground that it does not go far enough and is restricted only to acquisitions by means of learning. In the first place, I may observe that the word "Learning" is defined in the Bill in its most comprehensive and enlarged sense, so as to include, not only the learned professions, but also all arts and professions, however humble they may be. As to other acquisitions, they must be the result of manual labour, or the combined result of manual labour and patrimony, or of professional skill or learning and patrimony. As to acquisitions by means solely of manual labour

they are recognized as self-acquisitions by the Hindu law and no change, therefore, is needed in regard to it. Other acquisitions of which the proximate cause is not merely manual labour or professional skill and learning but patrimony also in a substantial degree do not form under the Hindu law self-acquisition, but partake of the character of patrimony. The Bill does not propose to alter this. Even if any alteration of the law in this respect were desirable, it will be a distinct departure from the Hindu law, and effect cannot be given to it without practically destroying the joint family system, nor will it be practicable to make an equitable apportionment of such an acquisition or improvement of the patrimony and ascertain what proportion thereof should be credited to patrimony and what proportion to labour, skill or learning. The Bill proceeds on the principle that the proximate cause, and not the remote cause, of the acquisition should be looked to in determining the character of the acquisition, and that any distinction which may be made, on the score of the learning being ordinary or special and scientific, is not only impracticable but one which may lead to opposite conclusions, according as you view it from the standpoint of the fund which was instrumental in securing education, or of the special and personal aptitude of the member who was benefited by the superior or scientific learning. The personal law of a nation, in its bearing on domestic and family relations, should be such as to ensure honesty and fair dealing at home, but if the law, owing to its obscurity and uncertainty or any fault therein, is such that honesty does not begin at home, the sooner it is changed the better will it be for the development of the character of the nation as citizens. In the note appended to my letter already referred to, I suggested the desirability of referring the Bill to the Hon'ble the Judges of the High Court for an expression of their opinions, besides inviting the opinions of leading native gentlemen in the Presidency. But in the Proceedings of Government under reply, the opinions of native gentlemen to whom the Bill was referred for remarks, and the memorials of certain bodies and associations, are alone printed.

Order—No. 14, Legislative, dated 16th February 1897.

The foregoing papers relate to the Hindu Gains of Learning Bill, a Bill to declare the gains of learning by a Hindu to be his separate property, which the Hon'ble V. Bhashyam Aiyangar, an unofficial additional member of the Madras Legislative Council, obtained leave to introduce at the meeting of the Council held on the 24th February 1891. The Bill was published in the Gazette so long ago as 1891 in the vernaculars of the Presidency without however eliciting from those affected by the measure any remarks which would enable the Government to gauge the feelings entertained by the Hindu community regarding the principles of the Bill. To attain this end the Government accordingly adopted the only course that appeared to be practicable, of consulting individually those known to be among the leading members of that community. The papers read above embody the opinions thus procured together with the further observations thereon of the Hon'ble Bhashyam Aiyangar who was given an opportunity of perusing them as well as some other opinions independently submitted including a memorial purporting to be from "the citizens of Madras" on the subject of the Bill.

2. Weighty opinions have been expressed both in favour of and against the measure. The main arguments on either side may be briefly summarized.

Against the Bill it is urged—

(1) That it is anomalous to treat the gains of learning in a different manner from the gains of trade:

(2) That the Bill is likely to prejudice the education of the younger members of joint families inasmuch as the managing member being debarred from a share in the gains of their learning will have no inducement to give them a liberal education:

(3) That the measure is unpopular with Hindus in general:

(4) That the Bill is unnecessary because the educated members of a family can always secure partition if they wish to enjoy their earnings separately:

(5) That the Bill strikes a blow at the joint family system:

(6) That the Bill is one which is equally applicable to Hindus living in other provinces and should, therefore, be taken into consideration by the Supreme Legislative Council:

(7) That the provisions of the Bill are inconsistent with the Hindu religion.

On the other hand in favour of the Bill it is urged—

(1) That the Bill will remove the existing uncertainty of the law which promotes litigation and disturbs the harmony of joint families and has a tendency to force a learned member to become divided or to conceal acquisitions made by him or to invest them *benami* when otherwise he might be willing to leave the ancestral property intact for the common benefit of the family:

(2) That it will tend to foster a spirit of individual enterprise and self-reliance securing the fruits of his individual efforts to the acquirer and stimulating other members of the family to support themselves:

(3) That it will tend to raise the credit and status of the educated members of the community:

(4) That the gains of special learning have become trifling now that education is widespread and are the result rather of natural ability and industry than of actual education:

(5) That it is impracticable to lay down distinctions between ordinary and extraordinary learning as contemplated in the rulings of the courts:

(6) That the existing rule places a premium upon idleness during the time of education:

(7) That the rule that the savings of a learned member of a family are liable to partititon tends to make him extravagant or to promote resort to fraudulent concealment of his earnings:

(8) That the provisions of the Bill coincide with the law as laid down in the Smritis:

(9) That the provisions of the Bill coincide with what is already accepted as the customary law among Marumakkatayam and Aliyasantana people in the districts of Malabar and South Canara:

(10) That the Bill will pave the way for the codification of Hindu law and remove the idea that such law is not subject to legislative control:

(11) That the Bill is desirable as it places the gains of learning only on the same footing with other self-acquired property:

3. Without entering here into a detailed criticism of these arguments the Government will merely state that it has arrived at the conclusion that the balance of argument inclines to the side of the large body of learning and intelligence which favours the Bill. Those who take an adverse view do not, it appears to the Government, press their opinions strongly and they do not allege that the Bill will do any positive harm to the Hindu religion. His Excellency in Council believes that the measure, if passed into law, will on the whole tend to abate practical abuses and inconveniences which ought to be remedied in order to open the way for wholesome social progress.

4. Two questions have been raised with reference to the Bill: (1) whether the Bill should be introduced into and proceeded with in the local Legislative Council, or is a measure which may more appropriately be dealt with in the Supreme Legislative Council; and (2) whether the provisions of the Bill affect the Hindu religion, or the religious rites and usages of the Hindus and as such require the sanction of the Governor-General under section 43 (5) of the Indian Councils Act, 1861.

5. As regards the first question His Excellency the Governor in Council is advised that the Hindu law as to gains of learning differs in Madras in several material respects from the law in Bengal and other provinces, and accordingly sees no objection to the progress of the Bill in the local Legislative Council.

As regards the second question, the Bill, so far as His Excellency the Governor in Council is in a position to judge, cannot properly be held to contain anything which affects the Hindu religion, or the religious rites and usages of the Hindus within the intention of the statute, and His Excellency the Governor in Council therefore considers that there is no obligation to obtain the previous sanction of the Governor-General. The Government of India will however be addressed on this point and on the subject matter of the Bill generally, and until the views of the Governor-General in Council are ascertained the author of the Bill will be requested to defer its further progress.

6. A copy of these Proceedings will be transmitted with a despatch to Her Majesty's Secretary of State.

[Here enter Letter No. 15, Legislative, to the Government of India, Legislative Department, dated 16th February 1897.]

(True Extract.)

G. S. FORBES,
Secretary to Government.

To the Hon'ble V. Bhashyam Aiyangar, C.I.E., Diwan Bahadur.

Exd. C. M. Thumbusawmy.

[Appendices I, II and III.

A

BILL

TO

Declare gains of learning by a Hindu to be his separate property.

WHEREAS it is expedient to remove all uncertainty as to the extent and nature of the right, title and interest which a member of a Hindu family has over property acquired by him by means of his learning and to provide a uniform rule applicable thereto irrespective of the nature of such learning and acquisitions: It is hereby enacted as follows:—

1. (1) This Act may be cited as "The Hindu Gains of Learning Act, 1891."

(2) It shall apply to every Hindu domiciled in any portion of the territories for the time being subject to the Government of Fort St. George; and it shall come into force on the first day of January 1892.

2. In this Act unless there is something repugnant in the subject or context—

"Learning" shall mean education, whether elementary, liberal, technical or scientific, and training of every kind which is usually intended to enable a person to follow any trade, industry, profession or avocation in life.

"Gains of Learning" shall mean all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning.

3. Notwithstanding any custom or any interpretation of Hindu Law to the contrary, no property being "gains of learning" made by a member of a Hindu family shall be held not to be his exclusive and separate property

(*a*) by reason of such learning having been in whole or in part imparted to him by any member, living or deceased, of such family, or with the aid of the joint funds of such family, or with the aid of the funds of any member thereof, or

(*b*) by reason of himself or his family having, while he was acquiring such learning, been maintained and supported wholly or in part by the joint funds of such family or by the funds of any member thereof, or

(*c*) by reason of all or any of the other members of such family being equal or superior to himself in learning.

4. Nothing in this Act contained shall affect

(*a*) any decision which may have been passed in any suit or proceeding before the coming into operation of this Act by any Court or other competent authority ;

(*b*) any right created under a partition of, or an agreement for a partition of, joint family property made prior to the commencement of this Act ;

(*c*) any alienation made of, or charge created over, any property prior to the commencement of this Act by any person other than the person who acquired such property by means of learning ; or

(*d*) any sale made, prior to the commencement of this Act, in execution of a decree.

Government of Fort St. George.

LEGISLATIVE DEPARTMENT.

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A

BILL

TO

Declare gains of learning by a Hindu to be his separate property.

STATEMENT OF OBJECTS AND REASONS.

This Bill relates to an important but obscure topic of Hindu law, viz., Vidyadhanam (Learning-money), or "gains of science" as it is usually referred to in decisions and English treatises on Hindu law. It is a measure in which the Hindu community, especially the educated section thereof, is deeply interested. Its object is to remove the distressing uncertainty in which this topic of Hindu law is involved, and to adapt it to the requirements of modern Hindu society by declaring that all acquisitions made by a Hindu by means of his learning shall form his separate and exclusive property, irrespective of the nature of such learning and of the assistance which he may have derived from family funds or from a member of his family in the acquisition of such knowledge. The result of such a declaration will be to preclude a member of a Hindu family governed by the ordinary Hindu law from claiming a share in properties acquired substantially by means of learning by another member thereof, though such learning might have been imparted to him by a member of the family, or at the expense of family funds; and also to secure such property to the personal heirs of the acquirer, though he might die an undivided member of the family.

The Bill will apply to all acquisitions of property made substantially by means of learning whether such acquisitions be made before or after this Bill becomes law; but it will not *proprio vigore* affect any decision which may have been passed, or any right which may have accrued under a partition or alienation made prior to the passing of the Bill.

The provisions of the Bill will also apply to Hindus governed by the Marumakattayam and Alyasantana systems of law.

The question, how far earnings made by an undivided member of a Hindu family by means of his learning, form his self-acquisition in which the other members are not entitled to claim shares, engaged the attention of various Smriti writers and exercised the wits and ingenuity of most of their commentators. The subject has also been considered by the Indian High Courts and the Judicial Committee of the Privy Council.

Most of the Smritis bearing on this question will be found collected in Colebrook's Digest of Hindu law (Higginbotham's edition, 1874), Vol. II, pages 443 to 463. With the exception principally of the texts of Katyayana, the Smritis, though not all so lucid and clear as one might wish, deal with the subject in a very equitable and liberal spirit; and if one were at liberty to deduce the law therefrom, disregarding the gloss of commentators, however high their authority may be, he will not be far wrong in regarding the provisions of the Bill as being substantially in accord with such law.

As regards the commentators, however, it must be admitted that most of them adopting Katyayana's definition of learning-money, viz.—"What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning"—and relying principally upon it, construe the other Smritis conformably thereto. And the preponderance of opinion among them is in favour of partibility, if the education by means of which acquisition of property was made had been imparted by a member of the family, or at the expense of the family funds. Some go so far as to hold that even the mere circumstance of the acquirer having been maintained out of family funds while he was acquiring his learning would render all acquisitions made by means of such learning the joint property of the family. One or two texts are also quoted as entitling a member of the family to a share if he had been maintaining the family of the acquirer while the latter had been away in pursuit of knowledge. Authority is also not wanting in favour of the position that the acquirer should share the acquisitions made by means of his learning with his brothers equally or more learned than himself. A distinction is also sought to be made between ordinary and extraordinary gains of learning, the commentators relying here again on a text of Katyayana giving illustrations of the learning-money that would be impartible. Among the commentators, Jimuta Vahana, the leading authority in the Bengal school, is almost the only one who does not quote Katyayana's definition of learning-money. His reasoning on the subject of self-acquisition would warrant the conclusion that gains made by means of ordinary education which is imparted at the expense of family funds, but not for the express purpose of gain, are not partible, but the earnings made by means of special learning so imparted for the express purpose of gain will be partible among all the co-heirs.

As to the case-law on the subject, the earliest decision which until recently was regarded as the leading case in this presidency is that in Chalakonda Alasani *v.* Chalakonda Ratnachellam *

* II, Madras High Court Reports, 56.

which related to the acquisitions made by a dancing girl by means of skill and special education imparted at the mother's expense. In this case, the texts and commentaries were elaborately reviewed and discussed by two of the most distinguished Judges of the Madras High Court, viz., Mr. Justice Collett (then District Judge of Vizagapatam) and Mr. Justice Holloway; and they arrived at opposite conclusions, the former holding that acquisitions made by means of learning form the individual and separate property of the acquirer, though such learning was imparted to him at the expense of family funds and acquired while receiving a family maintenance; and the latter (in concurrence with Phillips, J.) holding on appeal "that the gains, at all events the ordinary gains of learning and science which have been taught at the expense of family funds or by any member of the family, were divisible among all the members of the family." The above decision was followed in general terms by Sir Richard Couch, Chief Justice of Bombay, in Bai Mancha *v.* Naratamdas * (decided in 1869) which related to the acquisitions made by a vakil. In this case however it was not necessary to decide the point, as it appeared that the vakil united the business of money lender with that of vakil, and that there was joint family property of which he had the use. The Chief Justice fully concurring with Justice Holloway observed as follows:—

"We concur in this judgment and we cannot give any weight to what is said upon it in a recently-published text-book * * * * We have to ascertain what the law is and not what it ought to be; and having ascertained it, we must apply it. Nor having regard to the usage of Native society do we think it is bad law. There may be hard cases; and the remedy for such is in the hands of the parties themselves, viz., to divide." † The remedy here suggested is not practically so simple as it might sound in theory. A member of an undivided family which may consist of father and sons, of brothers, of cousins one or more degrees removed, of uncles and nephews, or of all these, cannot become divided from the rest of the family by any unilateral act of his or by a declaration or assertion on his part of his having become divided. He can become a separated member only by the consensus of all the members of the undivided family including minors who ought to be duly represented, or by instituting a suit for partition and obtaining a decree therein. The very fact that an earning member wishes to become divided will be distasteful to the other members of the family, especially to those who, without making any earnings themselves, expect to share in the earnings of such member and they will naturally thwart the attempt of such member to become divided, by offering a passive resistance more effectual than active resistance in evading and postponing indefinitely the desired partition. Under these circumstances the institution of a suit for partition becomes inevitable, if such member resolves to carry out his intention. The mere institution of such a suit, however, will not change his status, and he will continue an undivided member until he succeeds in obtaining a decree.‡ A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court.

In a later Madras case, Gungadharudu *v.* Narasammah § decided by Holloway and Kindersley, J.J., in 1872, the earnings of a vakil were held to be divisible, on the ground that they were the result of education imparted at the family expense, although it was found that he had received from his father nothing more than an ordinary general education. Holloway, J., referring to the dancing girl's case in II, Madras High Court Reports, p. 56, said as follows: "I fully adhere to the judgment of the High Court for which I am responsible and especially to the statement that the ordinary gains of science by one who has received a family maintenance are certainly partible." ‖ He further observed that, within the meaning of the authorities, the vakil's business is no matter of science at all. Justice Kindersley also observed "that the deceased vakil received from his father nothing more than a general education. It does not appear that he was distinguished by professional learning, and it would be difficult to presume that a vakil would probably be possessed of much learning or skill." ¶ This observation is significant in so far as it implies that acquisitions made by means of learning imparted at the family expense are divisible, though such learning was neither special nor scientific, but only general and elementary. In a Bengal case for partition, Dhunookdaree *v.* Gunput,** decided in 1868 where the plea of self-acquisition was set up and the defendant had been maintained at the family expense, but it was proved that his acquisitions were made without use of any funds belonging to the joint family, Mitter J., said: "His (plaintiff's) case in the Court below was that the defendant received his education from the joint estate and that he is consequently entitled to participate in every property that has been acquired by the defendant by the aid of such education. But this contention is nowhere sanctioned by the Hindu law, and I see nothing in justice to recommend it."†† The question was argued in 1877 before the Judicial Committee of the Privy Council in an important appeal from Madras, Pauliem *v.* Pauliem.‡‡ Though upon the findings of fact in the case it became unnecessary in their Lordships' opinion to decide the point, yet they expressed the leaning of their opinion on the question in the following terms: "This being their Lordships' view, it does not become necessary to consider whether the somewhat startling proposition of law

* VI, Bombay High Court Reports (A.C.J.) 1.
† Ibid, p. 6.
‡ Sakharam *v.* Hari Krishna, I.L.R. 6 Bom., 113, cited in § 454, Mayne's Hindu Law (4th Edn.).
§ VII, Madras High Court Reports, 47.
‖ VII, Madras High Court Reports, p. 51.
¶ Ibid, p. 50.
** XI, B.L.R., 201, note; S.C., X, Suth. 122.
†† X, Suth. 122.
‡‡ Indian Law Reports, 1, Madras, 252.

put forward by the appellant—which stated in plain terms amounts to this—that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever-after incapable of acquiring by his own skill and industry any separate property is or is not maintainable. Very strong and clear authority would be required to support such a proposition. For the reasons that they have given it does not appear to them necessary to review the text-books or the authorities which have been cited on this subject. It may be enough to say that, according to their Lordship's view, no texts which have been cited go to the full extent of the proposition which has been contended for. It appears to them further that the case reported in the 10th volume of Sutherland's Weekly Reporter in which a judgment was given by Mr. Justice Jackson and Mr. Justice Mitter, both very high authorities, lays down the law bearing upon this subject by no means so broadly as it is laid down in two cases which have been quoted as decided in Madras; the first being to the effect that a woman adopting a dancing girl and supplying her with some means of carrying on her profession was entitled to share in her gains; and the second to the effect that the gains of a vakil who has received no special education for his profession are to be shared in by the joint family of which he was a member, decisions which have been to a certain extent also acted upon in Bombay. It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Courts of Madras."* In the course of Counsel's argument, Sir Montague E. Smith, in reference to the Madras dancing girl's case of Challakonda Alasani *v.* Challakonda Ratnachellam remarked that "that was a case of special training. It does not follow that a case of general training like this would stand on the same footing."† This observation, coupled with the apparent approval with which their Lordships referred to the dictum of Mitter J., in the Bengal case above referred to, tends to point to a distinction between acquisitions made by means of general or elementary education and acquisitions made by means of special or scientific education—a distinction which, as already pointed out, is fairly warranted by the reasoning of the Dayabhaga of Jimuta Vahanah. It was not necessary for their Lordships to consider whether such a distinction, if any, is also recognised by the Mitakshara and other schools of Hindu law.

All the above cases were in 1882 reviewed by the High Court of Bombay in Lakshman *v.* Jamnabai ‡ in which the question was whether the property acquired by a Subordinate Judge who had received an elementary education at the family expense, but a knowledge of law and judicial practice without such aid, was impartible, and their Lordships, Melville and Kemball, JJ., observed as follows:—"It certainly appears to us that the dictum of Mitter J., that the proposition which we are considering is nowhere sanctioned by the Hindu law is not strictly accurate. The texts which have been cited to us do in our opinion establish it as a rule of Hindu law that the ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance, but that it is otherwise when the science has been imparted at the expense of persons who are not members of the student's family. But the question still remains whether the term 'Science' as used in the texts is in modern days to be construed as meaning a mere general education and not rather a special training for a particular profession. The words which we have italicized in the judgment of the Judicial Committee in Pauliem *v.* Pauliem, as well as an observation of one of their Lordships in the course of the argument that the Madras case of the dancing girl was a case of a special training and not necessarily applicable to a case of general training may seem to indicate that, if the question comes again before their Lordships, it will be considered chiefly with regard to the nature and the extent of the education imparted at the family expense * * * *. We think that we shall be doing no violence to the Hindu texts, but shall be only adapting them to the condition of modern Hindu society if we hold that when they speak of the gains of science which is the immediate imparted at the family expense, they intend the special branch of science which is the immediate source of the gains and not the elementary education, which is the necessary stepping stone to the acquisition of all science."§ This case shows, as remarked by the learned authors of West and Buhler's Digest of Hindu Law, "that acquired property does not rank as joint where there is not really an obligation of the acquirer to the family going beyond mere ordinary sustenance and rudimentary education" (West and Buhler's Hindu Law, 3rd Edition, p. 229). This principle was re-affirmed and given effect to in the very recent case of Krishnaji Mahadev Mahajan *v.* Moro Mahadev Mahajan reported in Indian Law Reports, Bombay, January part for 1891, p. 32, in which the earnings made by a "Karkun" or accountant were held to be indivisible by reason that the education which was imparted to him at the expense of the family funds was only rudimentary. Subsequent to the decision of the Privy Council in the case of Pauliem *v.* Pauliem, another case of a dancing girl, Boologam *v.* Swornam,‖ came on appeal in 1881 before the High Court of Madras from its Original Side before their Lordships, Innes and Kernan, JJ. Adverting to the leading case of Challakonda Alasani *v.* Challakonda Ratnachallam, their Lordships stated that they did not feel bound to follow the extreme doctrine laid down by the High Court in that case, having regard to the expression of opinion by the Judicial Committee in the case of Pauliem *v.* Pauliem. These are the principal reported decisions on the

* Indian Law Reports, I, Madras, 262.
† IV, Indian Appeals, 111.
‡ Indian Law Reports, VI, Bombay, 225.
§ Ibid, 242, 243.
‖ Indian Law Reports, IV, Madras, 330.

vexed question of Vidyadhanam or gains of learning, and it will be impossible to deduce therefrom rules that would be safe guides to the Hindu community in modern days or that would admit of practical application to concrete cases. No doubt the authority of the decision of the Madras High Court in II Madras High Court Reports, followed in VII Madras High Court Reports, has been much shaken by the dictum of the Privy Council in Pauliem *v.* Pauliem, and the later decision of the Madras High Court in Boologam *v.* Swornam and those of the Bombay High Court in Mayaram *v.* Jamnabhai, and Krishnaji Mahajan *v.* Moro Mahajan. But in Pauliem *v.* Pauliem there is only a general observation of the Privy Council by way of *obiter dictum*, and the dictum of Mitter J., cited by the Judicial Committee is, as pointed out by the Bombay High Court in Indian Law Reports, VI Bombay, not strictly accurate. In that case the High Court of Bombay professed to adopt the Hindu Law texts to the condition of modern Hindu society by holding that "when the texts speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains and not the elementary education which is the necessary stepping-stone to the acquisition of all science."

Assuming that the principle thus indicated will ultimately prevail in the final Court of Appeal, it does not seem to be one which could be applied in the majority of concrete cases. It will not be possible in the present state of education in India to distinguish in many cases between general, ordinary or rudimentary education and special, scientific or technical education. Further, what may have been regarded some twenty years ago as special, scientific or extraordinary education will probably now be regarded as nothing more than ordinary and general education. A rule based on such a distinction in the nature and character of education, though it may appear plausible in theory, cannot be practically worked without a distressing degree of uncertainty. Some of the texts and decisions also point to a distinction between ordinary and extraordinary gains of learning—a distinction which is still more prolific of uncertainty in its application. Even the question of fact whether and to what extent learning was imparted to a member of a Hindu family with the aid of joint family funds is generally beset with difficulties and often involved in obscurity of time by reason of the inquiry having to relate to a period long anterior to the date of such inquiry. If more money be spent upon the education of one son than on that of others, in nine cases out of ten it is due to the circumstance that that son has been gifted by nature and endowed with great intelligence and aptitude for learning than the others. Feelings of delicacy and other considerations postpone partition in many families and the uneasy feeling as to whether the acquisitions which are being made by a member thereof by his industry, intelligence and learning will at the time of partition be regarded as his own separate and exclusive property or as merged in the joint family property, leads to mutual distrust, discord and misunderstanding among the members of the family. A rule which by depriving a person and his heirs of the fruits of his learning, skill and industry because he happens to be a member of an undivided family, enables other members of such family each to claim as of right a share therein equal to that of the acquirer, and which on the death of the acquirer undivided intercepts the descent of such property to his personal heirs cannot but act prejudicially to the interests, advancement and material prosperity of the community in which such rule is or is supposed to be in operation. Such a rule would also operate to preclude the acquirer from devising the whole or any portion of such acquisitions* or making a gift thereof *inter vivos*,† and would also disable his personal creditors from pursuing the same as his assets after his death unless perhaps he has left male issue.‡ Such a rule, moreover, has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so, or to conceal acquisitions made by him, or to invest them *benami*.

The proposed measure aims at laying down a rule which would steer clear of all technical and often impracticable and sometimes fanciful distinctions and at adapting the Hindu Law texts and commentaries to the condition of modern Hindu society and to the nature of the varied modern education by means of which considerable acquisitions are made by educated Hindus in the learned professions and the numerous departments of the public service.

The word "education" is used in the Bill in its most comprehensive and enlarged sense.

The measure will not apply to cases in which, by his act and conduct, the acquirer of the property incorporates his self-acquisition with joint family property, nor will it apply to cases in which the proximate cause of acquisition is not only the skill and learning of the acquirer, but also the use of joint family funds.

The measure will, it is believed, commend itself to the Hindu community in general and will, if passed, promote cordiality of feeling among members of Hindu families, prevent division of the members and of the joint family property when such partition and division may otherwise be undesirable and unnecessary, and remove one of the most distressing uncertainties of Hindu law.

V. BHASHYAM IYENGAR.

MADRAS,
24*th February* 1891.

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* Vitla Butten *v.* Yamenamma, VIII Mad. H. C. R. 6, cited in § 380, Mayne's Hindu Law (4th Edition).
† Baba *v.* Thimma, I. L. R. VII, Madras 357; Ponnusami *v.* Thatha I. L. R. IX Madras 273.
‡ Koppoo Konan *v.* Chinnayan, I Madras Law Reporter 13, cited in § 306, Mayne's Hindu Law (4th Edition).

Government of Fort St. George.

LEGISLATIVE DEPARTMENT.

ANNEXURE

TO

A Bill to declare gains of learning by a Hindu to be his separate property.

(Statement of Objects and Reasons.)

APPENDIX III.

Abstract of the Proceedings of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Tuesday, the 24th day of February 1891.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—*Presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B.
The Hon'ble Mr. STOKES, C.S.I.
The Hon'ble Mr. GARSTIN, C.S.I.
The Hon'ble the ADVOCATE-GENERAL.
The Hon'ble Mr. PRICE.
The Hon'ble Mr. GROSE.
The Hon'ble C. SANKARAN NAYAR.
The Hon'ble the RAJAH OF VENKATAGIRI, K.C.I.E.
The Hon'ble V. BHASHYAM AIYANGAR, Rai Bahadur.
The Hon'ble Mr. BOYSON.
The Hon'ble Mr. HAMNETT, C.I.E.

* * * * *

HINDU GAINS OF LEARNING BILL.

The Hon'ble V. BHASHYAM AIYANGAR moved for leave to introduce a Bill to declare gains of learning by a Hindu to be his separate property, and said:—

"The measure which I beg leave to introduce into Council is one in which the Hindu community, especially the educated section thereof, is deeply interested. It relates to an important but obscure topic of Hindu Law, *viz.*, Vidyadhanam (Learning-money) or 'Gains of Science' as it is usually referred to in decisions and English treatises on Hindu Law.

"The question, how far earnings made by an undivided member of a Hindu family by means of his learning form his self-acquisition in which the other members are not entitled to claim shares, engaged the attention of various Smriti-writers and exercised the wits and ingenuity of most of their commentators. The subject has also been considered by the Indian High Courts and the Judicial Committee of the Privy Council.

"To convince the Council of the necessity for legislation on the subject, I need only present before Your Excellency the materials on which the existing law rests. I shall first refer to the principal Smritis, then to the chief commentaries, and lastly to the case-law.

"The principal Smritis bearing upon the topic of Vidyadhanam (Gains of Learning) are the following:—

MANU.

"'*Property (acquired) by learning belongs solely to him to whom (it was given)* likewise the gift of a friend, a present received on marriage or with the honey-mixture.'" (*a*).

"'What one (brother) may acquire by his labour without using the patrimony, that acquisition, (made solely) by his own effort, he shall not share unless by his own will (with his brothers.)'" (*b*).

NARADA.

"'Property gained by valour, or belonging to a wife *and the gains of science* are three kinds of wealth not subject to partition; and so is a favour conferred by the father (exempt from partition.)'" (*c*)

"'When one brother maintains the family of another brother, who is engaged in studying science, he shall receive a share of the wealth gained by that study, though he be ignorant (himself)'" (*d*)

"'A learned man is not bound to give a share of his own (acquired) wealth against his will to an unlearned co-heir unless it have been gained by him using the paternal estate.'" (*e*)

BRIHASPATI.

"'In property belonging to the grandfather which had been taken away and has been (afterwards) recovered by the father through his own ability, *as well as in property acquired by sacred knowledge, valour in arms*, &c., the father's ownership has been declared.'" (*f*)

"'He may make a gift out of that property, or even consume it at his will. But in his default, his sons are pronounced to be equal sharers.'" (*g*)

"'If among reunited co-parceners any one should acquire property *through learning, valour or other* (*independent effort of his own*) a double share must be given to him; the rest shall take equal shares.'" (*h*)

"'Whatever has been given by the paternal grandfather, the father, or the mother (all that) shall not be taken from him (who possesses it); (*he may keep*) *likewise property acquired by valour* and the wealth of his wife.'" (*i*)

GAUTAMA.

"'What a learned (co-parcener) has acquired by his own efforts, he may (at his pleasure) withhold from his unlearned co-parceners.'" (*j*)

"'Unlearned (co-parceners) shall divide (their acquisition) equally.'" (*k*)

VASISHTHA.

"'And if one of the (brothers) has gained something by his own (effort), he shall receive a double share.'" (*l*)

(*a*) Sacred Books of the East, Vol. XXV, chapter ix, para. 206.
(*b*) " " " " " " 208.
(*c*) " " " XXXIII, chapter xiii, para. 6.
(*d*) " " " " " " " 10.
(*e*) " " " " " " " 11.
(*f*) " " " XXXIII " xxv " 12.
(*g*) " " " " " " " 13.
(*h*) " " " " " " " 77.
(*i*) " " " " " " " 78.
(*j*) " " " II, chapter xxviii, para. 30.
(*k*) " " " " " " 31.
(*l*) " " " XIV, chapter xvii " 51.

CATYAYANA.

"'What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning.

"'2. What is gained by proving superior learning after a prize has been offered by *some third person*, must be considered as the acquisition of a scholar and ought not in general to be divided among co-heirs:

"'3. So what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee for answering a question in casuistry, or for ascertaining a doubtful point of law; or what has been gained as a reward for displaying knowledge, or for victory in a learned contest, or for reading the Veda with transcendent ability.

"'4. Such wealth have the sages declared to be the acquisition of science and not subject to distribution; and the law is the same in regard to *liberal or elegant arts* and to increase of price from superior skill in them.

"'5. A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed, or a present from a pupil formerly instructed, sages have declared to be the acquisition of science: What is otherwise acquired is the joint property of the co-heirs:

"'6. Even what is won by surpassing another in learning, after a stake has been deposited, Brihaspati pronounces the acquisition of knowledge and impartible.

"'7. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, Bhrigu calls the acquisition of science.' (*m*)

"'Yet Vrihaspati has ordained that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father, or by their paternal grandfather *or uncles*; and it is the same if the wealth was acquired by valour, *with assistance from the family estate*.'" (*n*)

"'Wealth acquired by a learned heir shall never be divided among his ignorant co-heirs; but he shall share it with such of the parceners as are equal or superior to himself in learning.'" (*o*)

VYASA.

"'*Wealth acquired by learning or gained by valour*, or received from affectionate kindred belongs, when partition is made, to him who acquired it, and shall not be claimed by the co-heirs.'" (*p*)

"'What is given by a paternal grandfather or by a father as a token of affection belongs to him who receives it; neither that, nor what is given by a mother, shall be claimed by co-heirs.'" (*q*)

"'What a man gains by his own strength, without reliance on the patrimony, he shall not give up to the co-heirs, *nor what he acquires by learning*.'"

"'The brethren participate in that wealth which one of them gains by valour or the like using any common property, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike.'" (*r*)

YAJNAVALKYA.

"'Whatever else is self-acquired, apart from and without detriment to the parental estate as a friendly or a nuptial present, does not belong to the co-heirs.'" (*s*)

"'Similarly he who recovers hereditary property once taken away may not give (to or share it with) his co-heir; *as also what has been gained by learning*.'" (*t*)

(*m*) Colebrooke's Digest of Hindu Law, Vol. II, Fourth Edition, page 444, para. 347.
(*n*) " " " " " " 448 " 349.
(*o*) " " " " " " 449 " 350.
(*p*) " " " " " " 444 " 346.
(*q*) " " " " " " pages 450 & 451, para. 354.
(*r*) Vyasa cited in the Daya Bhaga, chapter vi, section I, para. 14.
(*s*) Mandlik's Hindu Law, page 214, para. 118.
(*t*) " " " 215 " 118.
Cf. 2 Colebrooke's Digest of Hindu Law, page 450, para. 352.

"With the exception principally of the texts of Katyayana, the Smritis, though not all so lucid and clear as one might wish, would, but for authoritative commentaries involving the matter in considerable doubt and obscurity, fairly warrant the following propositions:—

(*a*) That acquisitions made by means of learning form the exclusive property of the acquirer, though such learning was imparted to him by a member of the family or with the aid of the family funds or while he was receiving maintenance from the family.

(*b*) That there is nothing to indicate that the learning referred to is special or scientific or that the word was used otherwise than in its ordinary and comprehensive sense as applicable to all kinds of learning and to different degrees of proficiency therein.

(*c*) That no distinction is made between ordinary and extraordinary gains of learning.

(*d*) That property acquired by a single member by means of learning and with the aid of family funds will be divisible among all the co-parceners, the acquirer being perhaps entitled to a double share.

(*e*) That the use of patrimony by a member of an undivided Hindu family in relation to the acquisition of property, which use would render such acquisitions the joint property of the family, must be the proximate cause of such acquisition and not merely a remote cause thereof as would be the use of patrimony in imparting the learning which was the immediate cause of the acquisition.

(*f*) That the precepts as to allowing shares to learned but not to ignorant co-heirs seem to apply to self-acquisitions in general and not in particular to acquisitions by means of learning, such precepts, however, if more than directory, being too vague to be judicially enforced.

(*g*) That acquisitions made by means of valour, art, etc., are governed by the same rules.

"The Bill which is proposed to be introduced is framed substantially on these lines.

"As regards the Text of Katyayana, defining Vidyadhanam or learning money, it must be admitted that it propounds a contrary doctrine. According to him, not only must the teacher be a stranger, but the pupil's daily sustenance must come from a source other than the family funds, so long as he is engaged in the pursuit of knowledge, in order that future profits made by him by means of such knowledge might become his exclusive property. The other Text of Katyayana giving examples of 'learning-money' would seem further to indicate that it is only the special or extraordinary gains, and not the ordinary gains of learning acquired as aforesaid, that will belong solely to the acquirer.

"Turning now to commentators, the Mitakshara, Smritichandrika, Viramitrodaya, and Madhavyam first demand attention, as they are of special authority in this Presidency.

"The author of the Mitakshara in commenting upon verses 118 and 119 of Yagnavalkya above quoted considers the clause 'without detriment to the paternal estate' occurring in verse 118 as qualifying the four kinds of gains declared impartible in the said two verses. Such a construction by itself will have no greater effect than to entitle the co-heirs to shares in property acquired, not simply by means of learning, but also with the aid of joint family property—a position which is

indisputable. The author of the Mitakshara, however, goes much farther in his commentary. He discusses the subject in Chapter I, Section 4, paragraphs 1 to 11. In paragraph 6 he maintains that what is earned by science acquired at the expense of ancestral wealth must be shared 'with the whole of the brethren and with the father;' and in paragraph 8 he relies in support of his conclusion upon Katyayana's definition of Vidyadhanam or learning-money and on Narada's text above quoted relative to one brother maintaining the family of another brother studying science. It will thus be seen that he does not regard acquisitions which are made by means of learning which was imparted at the family expense as acquisitions made by learning without detriment to the paternal estate, though the immediate cause of such acquisition is learning and not the use of patrimony. The author of the Viramitrodaya simply alludes to the subject in Chapter VII and is substantially in accord with the author of the Mitakshara. Madhava in his commentary on the Parasara Smriti reviews most of the texts above quoted. He does not state his conclusions explicitly, but there can be little doubt that he follows Katyayana and understands the other Smritis conformably to the text of Katyayana. He also alludes to the various kinds of Vidyadhanam or learning-money enumerated by Katyayana.

"The author of the Smritichandrika discusses this topic of Hindu Law at considerable length in Chapter II of his work. He also dwells minutely upon the various kinds of learning-money described by Katyayana. His conclusions are briefly summarised as follows:—

"'I. The gains of science are indivisible if the learning had been acquired from a stranger while receiving maintenance from persons not being members of the undivided family.'

"'II. If one parcener, be he ever so ignorant, shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning.'

"'III. Likewise the gains of science shall be divisible if the acquirer had been instructed in his own undivided family by his father, uncle or the like.'

"'IV. In a partition of the gains of science that are divisible as described in the foregoing two paragraphs, the acquirer shall be entitled to a double share.'

"'V. In the gains of science that are indivisible as defined in paragraph 1 of this summary, the acquirer, if willing, may give a share to his learned co-heir, but to an ignorant co-heir he is not at liberty to give a share though he may be disposed to do so.'

"'VI. The gains of valour acquired *with* the use of common property are divisible, but not those that are acquired *without* the use of it.'

"'VII. In the gains of valour that are divisible as above described, the acquirer will take two shares.'" (*v*)

"It may be noted that according to all these commentators who are of special authority in Southern India, the incident of partibility or impartibility does not depend upon the nature or kind of learning: whether the learning be elementary or advanced, general or scientific, the acquisitions made thereby are alike partible, if the learning had been imparted at the expense of the family or by a member of the family. The authors of the Mitakshara and Viramitrodaya do not seem to recognize any distinction between ordinary and extraordinary gains of learning. The other two commentators prominently allude to illustrations of Vidyadhanam or learning-money, given by Katyayana, which evidently refer to special or extraordinary gains and not to ordinary gains of learning.

(*v*) Smriti Chandrika Summary by the Translator, T. Kristnaswamy Iyer, paragraphs I to VII, pages 98 and 99.

"The leading commentators of the other schools of Hindu Law have also discussed this question; but it will be sufficient to refer to them briefly. The Vivadachintamani, which is of great authority in the Mithila school, treats alike earnings made by one proficient in letters and those made by skill in the military, mechanical or other art. According to the Vyavahara Mayukha the incident of impartibility will exist only if the acquisition of learning and of the wealth therefrom have been independent of the paternal wealth.

"In the Daya Bhaga of Jimutavahana, the subject is discussed at greater length than in any other treatise. He distinguishes between the use of paternal estate for ordinary maintenance and the like and the use of it for the express purpose of gain. According to him, it is no reason for partibility that the acquirer has received his sustenance from the common funds, while he was earning property, his reasoning being that if it were otherwise, no separate acquisition could possibly be made which would not involve the use of joint funds: for every member must have been fed and clothed from the common funds during the years of his infancy, that is, until he arrives at an age when he can earn for himself. The preservation of life therefore is attended with some consumption of joint property, and as no earning is possible unless life has been preserved, all acquisitions depend indirectly upon assistance received from joint property. It might, therefore, have been supposed that separate acquisition absolutely independent of any help from the general family estate would be a non-existent entity. It is only the consumption of family funds, which has for its express purpose the acquisition of wealth, that will take away the exclusive character of the wealth acquired. According to Jimutavahana, therefore, who is of paramount authority in the Bengal school, learning-money would not be partible simply by reason of the acquirer having been maintained at the expense of family funds while he was acquiring learning, and his reasoning would fairly warrant the conclusion that gains made by means of ordinary education which is imparted not for the express purpose of gain, though at the expense of family funds, is impartible; but that earnings made by means of learning so imparted for the express purpose of gain will be partible among all the co-heirs. It may be observed that he is almost the only commentator who does not quote Katyayana's definition of 'learning-money,' though he quotes Katyayana in enumerating the various species of acquisition by means of learning.

"The case-law on the subject will now be referred to.

"The case which, until recently, has been regarded as the leading case on the point is that of Chalakonda Alasani *vs.* Chalakonda Rathnachalam (*x*) decided in 1864 relating to the acquisition made by a dancing girl by means of skill and special education imparted at the mother's expense. In this case the texts and commentaries were elaborately reviewed and discussed by two of the most distinguished Judges of the Madras High Court, namely, Mr. Justice Collett (then District Judge of Vizagapatam) and Mr. Justice Holloway; and they arrived at opposite conclusions, the former holding that acquisitions made by means of learning form the individual and separate property of the acquirer, though such learning was imparted to him at the family expense and acquired while receiving a family maintenance; and the latter (in concurrence with Phillips J.) holding on appeal that the gains, at all events the ordinary gains of learning and science which have been taught at the expense of family funds or by any member of the family, were divisible among all the members of the family. Mr. Collett in support of his conclusion relied principally upon the texts of Manu

(x) II Madras High Court Reports, page 56.

and Yajnavalkya above quoted, and, holding that the illiberal views taken by several of the Hindu commentators, and particularly by the author of the Mitakshara, were not warranted by the Texts of Hindu Law, observed as follows (at page 62):—

"'If therefore I seem to question sometimes the reasonableness of the glosses of a commentator it is because I conceive that this Court is bound to search out and ascertain for itself from among the sources of Hindu Law, the principles of the law; and when commentators are not in accordance with ancient texts or differ as they often do among themselves, it needs must be that this Court should decide according to the weight of authority, the support of analogy and the reasonableness and equity of the rule;' and again at pp. 69 and 70, 'and in so doing I am sure that I am laying down an equitable rule and I believe also the rule most convenient with the weight of authority. There is no doubt some conflict of opinion: but I think that the true position is that the mere fact of a Hindu receiving a professional education at the expense of his family, as for instance from his father, does not render all his subsequent professional earnings liable to be divided with his brothers. I believe that on a due consideration of the authorities the rule of law is not really different in respect to property acquired by learning, to what it is in respect to property acquired by agriculture or by trade. The test is the substantial use of joint property during and for the purpose of the acquisition; if there is none such, then the acquisition does not become joint property.' Justice Holloway in support of his contrary conclusion relied principally upon the Mitakshara, chapter I, section 4, paragraph 6, and on the definition by Katyayana of Vidyadhanam or learning-money which would be the separate and indivisible property of the acquirer, and observed as follows at page 77: 'We are constrained to say that we feel bound by authority to hold that the gains, at all events the ordinary gains of learning and science which have been taught at the expense of the family funds, are not impartible. To render them so, the science or learning must have been imparted by persons not members of the learner's family.'"

"The above decision was followed in general terms by Sir Richard Couch, Chief Justice of Bombay, in Bai Manchha *vs.* Narotamdas Kashidas (*y*) decided in 1869, which related to the acquisitions made by a vakil. In this case, however, it was not necessary to decide the point, as it appeared that the vakil united the business of money-lender with that of vakil, and that there was joint family property of which he had the use. The Chief Justice fully concurring with Justice Holloway observed as follows at page 6: 'We concur in this judgment and we cannot give any weight to what is said upon it in a recently published Text book. (*z*) * * * We have to ascertain what the Law is and not what it ought to be: and having ascertained it we must apply it. Nor having regard to the usage of Native society, do we think it is bad law. There may be hard cases and the remedy for such is in the hands of the parties themselves—*viz.*, to divide.' The remedy here suggested is not practically so simple as it might sound in theory. A member of an undivided family which may consist of father and sons, of brothers, of cousins one or more degrees removed, of uncles and nephews or of all these, cannot become divided from the rest of the family by any unilateral act of his or by a declaration or assertion on his part of his having become divided. He can become a separated member only by the consensus of all the members of the undivided family, including minors, who ought to be duly represented, or by instituting a suit for partition and obtaining a decree therein. The very fact that an earning member wishes to become divided will be distasteful to the other members of the family, especially to those who, without making any earnings themselves, expect to share in the earnings of such member. And they will naturally thwart the attempt of such member to become divided, by offering a passive resistance more effectual than active resistance in evading and postponing indefinitely the desired partition. Under

(y) 6 Bom[illegible] High Court Reports, A. C. J. 1 & 6.
(z) Grady [illegible] Hindu Law, [illegible]ge 405.

these circumstances the institution of a suit for partition becomes inevitable, if such member resolves to carry out his intention. The mere institution of such a suit, however, will not change his status and he will continue an undivided member until he succeeds in obtaining a decree.* A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court, to say nothing of the time occupied before commencing such a suit in obtaining the requisite materials and information for the preparation of the voluminous schedule of family properties which has to be annexed to the plaint.

"In a later Madras case, Duruvasala Gunghadharudu *vs.* Duruvasala Narasamma, (*a*) decided by Holloway and Kindersley J.J., in the year 1872, the earnings of a vakil were held to be divisible, on the ground that they were the result of education imparted at the family expense, although it was found that he had received from his father nothing more than an ordinary general education. Holloway J. referring to the dancing girl's case in II Madras High Court Reports, page 56, said as follows:—'I fully adhere to the judgment of the High Court for which I am responsible and especially to the statement that the ordinary gains of science by one who has received a family maintenance are certainly partible.' He further observed that within the meaning of the authorities the vakil's business is no matter of science at all. Justice Kindersley also observed that 'the deceased vakil received from his father nothing more than a general education.' It does not appear that he was distinguished by his professional learning, and it would be difficult to presume that a vakil would be probably possessed of much learning or skill, and that the fair presumption would be that such attainments as the vakil possessed had been acquired with the assistance of the family means. Whether the remark that the vakil's business is no matter of science at all and that vakils cannot be presumed to be possessed of much learning or skill will be generally endorsed or not, the observation is significant in so far as it implies that acquisitions made by means of learning imparted at the family expense are divisible, though such learning was neither special nor scientific, but only general and elementary.

"In a Bengal case for partition, Dhunook Dharee Lall *vs.* Gunput Lall (*b*), decided in 1868, where the plea of self-acquisition was set up and the defendant had been maintained at the family expense, but it was proved that his acquisitions were made without use of any funds belonging to the joint family, Mitter Justice said as follows:—'His (plaintiff's) case in the Court below was that the defendant received his education from the joint estate, and that he is consequently entitled to participate in every property that has been acquired by the defendant by the aid of such education. But this contention is nowhere sanctioned by the Hindu Law and I see nothing in justice to recommend it.'

"The question was argued in 1877 before the Judicial Committee of the Privy Council in an important appeal from Madras, Pauliem Valoo Chetty *vs.* Pauliem Soorya Chetty. But upon the findings of fact in the case it became unnecessary in their Lordships' opinion to decide the point. The suit was brought to set aside a will on the ground that, under the Mitakshara law, property acquired by a Hindu by successful trading and by the exercise of industry and intelligence became joint in contemplation of law between him and his son, if the nucleus with which he commenced trading was derived from his father or if he had been educated out of the

* Sakharam *v.* Hari Krishna I.L.R. 6 Bom., 113, cited in § 454 Mayne's Hindu Law (4th Edn.)
(*a*) VII Madras High Court Reports, pages 47 and 51.
(*b*) XI Bengal Law Reports, page 201, note; same case. X Sutherland's Weekly Reporter, page 122.

joint funds of the family. It was held on the evidence that such nucleus had not been derived from his father and that he had not been educated out of any joint fund, but out of the separate estate of the father. Adverting to this latter finding their Lordships remarked :—'There was therefore at that time no joint estate in the proper sense of the word, and the foundation of fact then fails upon which the legal inference was to have been based;' but they gave expression to the leaning of their opinion on the question in the following terms: 'This being their Lordships' view, it does not become necessary to consider whether the somewhat startling proposition of law put forward by the appellant—which, stated in plain terms, amounts to this, that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever-after incapable of acquiring by his own skill and industry any separate property—is or is not maintainable. Very strong and clear authority would be required to support such a proposition. For the reasons that they have given, it does not appear to them necessary to review the Text Books or the authorities which have been cited on this subject. It may be enough to say that, according to their Lordships' view, no Texts which have been cited go to the full extent of the proposition which has been contended for. It appears to them, further, that the case reported in the 10th volume of Sutherland's Weekly Reporter, in which a judgment was given by Mr. Justice Jackson and Mr. Justice Mitter, both very high authorities, lays down the law bearing upon this subject by no means so broadly as it is laid down in two cases which have been quoted as decided in Madras; the first being to the effect that a woman adopting a dancing girl, and supplying her with some means of carrying on her profession, was entitled to share in her gains; and the second to the effect that the gains of a vakil who has received no special education for his profession are to be shared in by the joint family of which he was a member; decisions which have been to a certain extent also acted upon in Bombay.

"It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Court of Madras.

"In the course of Counsel's argument, Sir Montague E. Smith, in reference to the Madras dancing girl's case of Chalakonda Alasani *vs.* Chalakonda Ratnachalam (*c*) remarked (page 111) that 'that was a case of special training; it does not follow that a case of general training like this would stand on the same footing.' This observation coupled with the apparent approval with which their Lordships referred to the dictum of Mitter, Justice, in the Bengal case (*d*) above referred to tends to point to a distinction between acquisitions made by means of general or elementary education, and acquisitions made by means of special or scientific education—a distinction which, as already pointed out, is fairly warranted by the reasoning of the Dayabhaga of Jimutavahana. It was not necessary for their Lordships to consider whether such a distinction, if any, is also recognised by the Mitakshara and other schools of Hindu Law.

"It may also be mentioned that, so far as the testator's son was concerned who sought to impugn the validity of the will on the ground that the property acquired by his father, the testator, was the joint property of the testator and of himself, it was immaterial, within the meaning of the texts and commentaries bearing on the topic of Vidyadhanam or gains of learning, whether the charges incurred in imparting learning

(*c*) II Madras High Court Reports, page 56.
(*d*) XI Bengal Law Reports, page 201, note.

to the testator were borne by the separate or self-acquired estate of his father, or by the ancestral or other estate of his father, which formed the joint estate of the father and his son, the testator. All the above cases were in 1882 reviewed by the High Court of Bombay in Lakshman *vs.* Jamnabhai (*e*) in which the question was whether the property acquired by a subordinate judge who had received an elementary education at the family expense, but a knowledge of law and judicial practice without such aid, was impartible ; and their Lordships Melville and Kembal J.J. observed as follows :—

" ' It certainly appears to us that the dictum of Mitter J. that the proposition which we are considering is nowhere sanctioned by Hindu Law, is not strictly accurate. The Texts which have been cited to us do, in our opinion, establish it as a rule of Hindu Law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance, but that it is otherwise when the science has been imparted at the expense of persons who are not members of the student's family. But the question still remains whether the term 'science' as used in the texts, is, in modern days, to be construed as meaning a mere general education, and not rather a special training for a particular profession. The words which we have italicized in the judgment of the Judicial Committee in Pauliem *vs.* Pauliem (*f*), as well as an observation of one of their Lordships in the course of the argument, that the Madras case of the dancing girl was a case of a special training and not necessarily applicable to a case of general training, may seem to indicate that, if the question comes again before their Lordships, it will be considered chiefly with regard to the nature and extent of the education imparted at the family expense. Mr. Mayne, in his valuable work on Hindu Law, discusses this question with his usual ability. 'It is difficult,' he says, 'to see why a person who has made gains by science, after having been educated or maintained at the family expense, should be in a worse position than any other person who has been so educated or maintained, and who has afterwards made self-acquisitions. Jimuta Vahana lays it down that, while it is attempted to reduce a separate acquisition into common property on the ground that it was obtained with the aid of common property, it must be shown that the joint stock was used for the express purpose of gain. It becomes not common merely because property may have been used for food or other necessaries, since that is similar to the sucking of the mother's breast.' This seems to be good sense. If a member of a joint Hindu family were sent to England, at the joint expense, to be educated for the Bar or the Civil Service, it seems fair enough that his extra gain should fall into the common stock, as a recompense for the extra outlay incurred. It might be assumed that when the outlay was incurred, the reimbursement was contemplated. But it is difficult when all start on exactly the same level, with nothing but the ordinary maintenance and education which is common to persons of that class of life' (*g*).

" ' We think that we shall be doing no violence to the Hindu Texts, but shall be only adapting them to the condition of modern Hindu society, if we hold that when they speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains, and not the elementary education which is the necessary stepping stone to the acquisition of all science. Adopting this principle and applying it to the present case, we find, as we have said, that there is no reason to suppose that Dayaram acquired at Dharwar and Belgaum anything more than a rudimentary education. We see

(*e*) Indian Law Reports 6 Bombay 225.
(*f*) Law Reports 4 Indian Appeals, pages 109 & 117.
(*g*) Mayne's Treatise on Hindu Law and Usage (fourth edition), Section 259.

no reason to doubt that the knowledge of law and judicial practice which qualified him for the post of a Judge was acquired by him in a lawyer's office in Bombay and in the Sudder Adalat. Assuming that the burden of proving that this knowledge was acquired without any aid from the family estate lies upon the Respondent (though the observations of the Privy Council in Luximon Rao Sudasew *vs.* Mullao Rao Bajee (*h*) tend to the opposite conclusion), we find sufficient in the evidence and especially in the earlier letters written by Dayaram from Bombay to shew that Dayaram was not receiving pecuniary aid from his father, but on the contrary was supplying his father with such money as he could spare.' This case shows, as remarked by the learned authors of West and Buhler's Digest of Hindu Law, ' that acquired property does not rank as joint where there is not really an obligation of the acquirer to the family going beyond mere ordinary sustenance and rudimentary education.' "

" This principle was reaffirmed and given effect to in the very recent case of Krishnaji Mahadev Mahajan *vs.* Moro Mahadev Mahajan reported in I.L.R. Bom. January part for 1891, p. 32, in which the earnings made by a ' Karkun' or accountant were held to be indivisible by reason that the education which was imparted to him at the expense of the family funds was only rudimentary. Subsequent to the decision of the Privy Council in the case of Pauliem *vs.* Pauliem (*i*), another case of a dancing girl Boologam *vs.* Swornam came on appeal before the High Court at Madras from its original side (*j*) before their Lordships Innes and Kernan J.J. in 1881 ; and it was held in that case that property acquired with income derived from prostitution by a Hindu dancing girl who had received the ordinary education in music and dancing is not partible, it having been found that her earnings, so far as the evidence disclosed, were acquired without detriment to the family estate and without any scientific acquirements which had been imparted by the aid of family funds. Adverting to the leading case of Challakonda Alasani *vs.* Challakonda Ratnachalam, their Lordships stated that they did not feel bound to follow the extreme doctrine laid down by the High Court in that case, having regard to the expression of opinion by the Judicial Committee in the case of Pauliem *vs.* Pauliem.

" These are the principal reported decisions on the vexed question of Vidyadhanam or Gains of Learning under the Hindu Law, and it will be impossible to deduce therefrom rules that would be safe guides to the Hindu community in modern days or that would admit of practical application to concrete cases. No doubt, the authority of the decision of the Madras High Court in II Mad. H.C.R. followed in VII Mad. H.C.R. has been much shaken by the dictum of the Privy Council in Pauliem *vs.* Pauliem and the later decision of the Madras High Court in Boologam *vs.* Swornam and those of the Bombay High Court in Mayaram *vs.* Jamnabay and Krishnaji Mahajan *vs.* Moro Mahajan. But in Pauliem *vs.* Pauliem there is only a general observation of the Privy Council by way of *obiter dictum*, and the dictum of Mitter J. cited by the Judicial Committee is, as pointed out by the Bombay High Court in I.L.R. 6 Bom., p. 225, not strictly accurate. In that case the High Court of Bombay professed to adapt the Hindu Law texts to the condition of modern Hindu society by holding that ' when texts speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains and not the elementary education which is the necessary stepping-stone to the acquisition of all science.'

(*h*) V Weekly Reporter P. C. 67.
(*i*) Law Reports 4 Indian Appeals, pages 109 and 117.
(*j*) I.L.R. 4, Madras, page 330.

"Assuming that the principle thus indicated will ultimately prevail in the final Court of Appeal, it does not seem to be one which could be applied in the majority of concrete cases. It will not be possible in the present state of education in India to distinguish in many cases between general, ordinary or rudimentary education, and special, scientific or technical education. As an illustration, I may refer to the difficulty felt in the interpretation of the word 'science' occurring in the phrase 'for the promotion of education, literature, science or the fine arts' in Sub-section 3, Section 11, Chapter 51, 48 and 49 Vict., in the very recent case of 'The Commissioners of Inland Revenue *v.* James Forrest' * before the House of Lords, particularly to the Judgment of Lord Halsbury. Further, what may have been regarded some twenty years ago as special, scientific or extraordinary education will probably now be regarded as nothing more than ordinary and general education.

"A rule based on such a distinction in the nature and character of education, though it may appear plausible in theory, cannot be practically worked without a distressing degree of uncertainty. The great majority of the cases to which the rule will have to be applied will be those in which the earnings made by the various classes of legal practitioners ranging from Barrister-at-Law down to second-grade pleader, and by public servants of all grades in the numerous departments of public service, form the subject of litigation. It will be impossible to predicate in most cases what section of legal practitioners and public servants are to be regarded as making their earnings by means of scientific education and what section by means only of ordinary, general education. Some of the texts and decisions also point to a distinction between ordinary and extraordinary gains of learning — a distinction which is still more prolific of uncertainty in its application. Even the question of fact whether and to what extent learning was imparted to a member of a Hindu family with the aid of joint family funds is generally beset with difficulties and often involved in obscurity of time by reason of the enquiry having to relate to a period long anterior to the date of such enquiry. If more money be spent upon the education of one son than on that of others, in nine cases out of ten it is due to the circumstance that that son has been gifted by nature and endowed with greater intelligence and aptitude for learning than the others. Feelings of delicacy and other considerations postpone partition in many families, and the uneasy feelings as to whether the acquisitions which are being made by a member thereof by his industry, intelligence and learning will at the time of partition be regarded as his own separate and exclusive property or as merged in the joint family property, leads to mutual distrust, discord and misunderstanding among the members of the family. A rule which, by depriving a person and his heirs of the fruits of his learning, skill and industry, because he happens to be a member of an undivided family, enables other members of such family each to claim as of right a share therein equal to that of the acquirer, and which on the death of the acquirer undivided intercepts the descent of such property to his personal heirs, cannot but act prejudicially to the interests, advancement and material prosperity of the community in which such a rule is, or is supposed to be, in operation. Such a rule would also operate to preclude the acquirer from devising the whole or any portion of such acquisitions † or making a gift thereof *intervivos* ‡, and would also disable his personal creditors from pursuing the same as his assets after his death unless perhaps

* Law Reports, App. Cases Vol. XV, p. 334.
† Vitla Butten *v.* Yamenamma, VIII Mad. H.C.R. 6, cited in § 880 Mayne's Hindu Law (4th edition).
‡ Baba *v.* Thimma, I.L.R. VII, Madras 357, Ponnusami *v.* Thatha I.L.R. IX—Madras 273.

he has left male issue. * Such a rule, moreover, has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so, or to conceal acquisitions made by him or to invest them *benami*.

"It may be argued that in cases in which a particular member of the family has been educated specially by family funds and by reason thereof the joint family funds have been indented upon to an extent greater than in the case of other members, it is but fair and just that the others should come in for their quota of the earnings made by such special training. Assuming for the sake of argument the justice of such a contention, it falls to the ground by reason that the very law on which such a rule is supposed to be founded enables the person to whom such learning has been imparted out of family funds to become divided from his co-parceners the very day after he attains his majority, or as soon as he completes his education thereafter, and thus to appropriate exclusively to himself the subsequent fruits of his learning.

"The proposed measure aims at laying down a rule which would steer clear of all technical and often impracticable and sometimes fanciful distinctions, and at adapting the Hindu Law texts and commentaries to the condition of modern Hindu society and to the nature of the varied modern education, by means of which considerable acquisitions are made by educated Hindus in the learned professions and the numerous departments of the public service.

"The word 'education' will be used in the proposed Bill in its most comprehensive and enlarged sense. The measure will not apply to cases in which, by his act and conduct, the acquirer of the property (incorporates) his self-acquisition with joint family property and thus makes a gift of it to the family; nor will it apply to cases in which the proximate cause of acquisition is not only the skill and learning of the acquirer, but also the substantial use of joint family funds.

"The measure, it is believed, will commend itself to the Hindu community in general, and will, if passed, promote cordiality of feeling among members of modern Hindu families, prevent division of the members and of the joint family property when such division and partition may otherwise be undesirable and unnecessary, and remove one of the most distressing uncertainties of Hindu Law. It will be applicable as much to Hindus governed by Marumakkattayam or Aliyasantana system of law as to the Hindus governed by the ordinary Hindu Law."

The motion, having been seconded by the Hon'ble C. SANKARAN NAYAR, was put to the Council and carried.

The Hon'ble V. BHASHYAM AIYANGAR also moved that the Bill and Statement of Objects and Reasons be published in the Fort St. George and District Gazettes in English and in the Vernaculars.

The motion was put and agreed to.

* * * * *

(By Order.)

A. BUTTERWORTH,
Ag. Under Secy. to Govt., Legislative Dept.

FORT ST. GEORGE,
24*th February* 1891.

* Koppoo Konan *v.* Chinnayan, I Madras Law Reports 13, cited in § 306, Mayne's Hindu Law (4th Edition).

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Government {1897} of Madras.

LEGISLATIVE.

Recd. } 1897. *Enclosures*

Regd. } *Spare copies*

Letter, &c., Nos. 15, 16, 16th February 1897.

FEBRUARY.

Hindu Gains of Learning Bill.

Expressing the views of this Government in regard to the introduction of the — into the Madras Legislative Council, and requesting that, if necessary, the sanction of His Excellency the Governor-General, required under section 43 (5) of the Indian Councils Act, 1861, may be accorded.

LEGISLATIVE DEPARTMENT.

Letter—from G. S. FORBES, Esq., I.C.S.,
Secretary to the Government of Fort St. George,

To

The SECRETARY to the GOVERNMENT of INDIA,
Legislative Department.

Sir,

In continuation of the correspondence noted on the margin, * I am directed to address you on the subject of the Hindu Gains of Learning Bill.

* Letter from the Government of India, No. 1456, Legislative, dated 24th August 1891.
Letter from the Government of India, No. 519, Legislative, dated 8th March 1893.
Letter to the Government of India, No. 22, Legislative, dated 17th March 1893.

2. The Honourable V. Bhashyam Aiyangar, an un-official additional member of the Madras Legislative Council, obtained leave to introduce the Bill at the meeting of the Council held on the 24th February 1891, and the Bill was published in English in the *Fort St. George Gazette* of the 10th March 1891 and in the Tamil, Telugu, Malayalam and Canarese vernaculars in the *Fort St. George Gazette* of the 26th and 19th May, 16th June and 21st April, respectively, of the same year.

3. A copy of the Bill was in due course transmitted to Her Majesty's Secretary of State for India. Lord Cross' despatch, † in reply, indicated two points on which it was desirable to have an assurance before the Bill was farther proceeded with in the Madras Legislature—

† Despatch No. 2, Legislative, dated 25th June 1891, to the Government of Madras.

(1) whether the opinion of the Hindu community at large on the measure had been ascertained, especially the views of those most interested in the changes contemplated by the Bill; and

(2) whether the sanction of His Excellency the Governor-General under section 43 of Statute 24 and 25 Victoria, Cap. 67, was not necessary since the proposed measure involved the alteration of a law which the persons affected by it may regard as part of their religious code.

4. The steps that have been taken to elicit the views of the Hindu community regarding the principles of this important measure are set out in the Proceedings of this Government, No. 14, Legislative, dated 16th February 1897, a copy of which accompanies this letter. The Proceedings also embody the opinions recorded by those consulted and others.

These opinions and the whole question have now been carefully considered by His Excellency the Governor in Council.

5. In the note ‡ attached to his letter of the 2nd May 1892 the Hon'ble V. Bhashyam Aiyangar makes certain general observations as to the direction which legislation may profitably take in the matter of Hindu law. These observations appear to His Excellency the Governor in Council to throw out a new line of

‡ Printed in G.O., No. 13, Legislative, dated 22nd February 1893.

thought deserving of careful reflection. The Hon'ble Bhashyam Aiyangar considers that it is the duty of the legislature to advance the Hindu law and adapt it to the conditions and sentiments of modern Hindu society, without, of course, doing violence to any of its fundamental or leading doctrines; he calls attention to the mass of litigation which arises out of Hindu family law, owing to the obscurity of that law or to changes in Hindu society and the growth of new ideas and rights; and he believes that legislation will take a very beneficial course if it enacts from time to time such changes as may be necessary to adapt the Hindu law to modern requirements and to remove uncertainties in the administration of that law on points of grave and practical importance. He adds that at the commencement and for a considerable time, legislation in matters of Hindu law can only be fragmentary, but that this has its advantages, and that such process of legislation may eventually form a sound basis for the codification of the Hindu law. These views, I am to observe, have generally much impressed this Government. Without committing itself to the particular view that the codification of the Hindu law is an end necessarily to be kept in sight—indeed while admitting a possible danger in premature or hasty codification—this Government believes that it is by means of partial legislation, of which the present Bill may serve as an example, that the Hindu law, so far as it can be so adapted consistently with retaining its cardinal principles, can best be made to conform to the advancing needs of the Hindu community; and that the efforts of enlightened members of that community in this direction are therefore entitled to the friendly encouragement or assistance of the Government.

6. So far as the present Bill is concerned, His Excellency in Council, after having carefully considered the arguments adduced for and against it, considers that the balance of argument inclines to the side of those who are in favour of it. The Bill, His Excellency in Council observes, is supported by a large body of learning and intelligence and is calculated to abate practical abuses and inconveniences that ought to be remedied in order to open the way for wholesome social progress, and though there are doubtless objections to the measure, they do not appear to be insuperable. Even those who regard the measure adversely do not seem to oppose it very strongly, while they do not allege that it will do any positive harm to the Hindu religion. The fact that no petitions deprecating the measure were received when the Bill was published in the several vernaculars in 1891 may also be accepted as some evidence that orthodox Hindus are generally indifferent to the legislation contemplated and are not likely to raise any clamour against it. His Excellency the Governor in Council has accordingly come to the conclusion that the measure should be allowed to take its natural course without opposition on the part of this Government.

7. Two points remain for consideration. The *first* is, whether the Bill should be proceeded with in the Local or in the Supreme Legislative Council. The Secretary of State speaks of the measure in paragraph 2 of his despatch quoted above, as "relating to a question of great importance and interest to all Hindus not only in the Madras Presidency but throughout India." It is therefore a question whether the Bill does not embody principles which are equally applicable to Hindus living in other parts of British India and should therefore be taken into consideration by the Supreme Legislative Council. The Hon'ble V. Bhashyam Aiyangar in his note of 2nd May 1892 already referred to, while he has no objection to the introduction of the measure into the Council of the Governor-General, if the Government of India should consider such a course necessary, points out that the Bombay Hindu Heirs Relief Act VII of 1866 is an instance of legislation on a general point of Hindu law by a local legislature. Moreover the current of legal decisions as set out in the Statement of Objects and Reasons attached to the Bill so far as this Presidency is concerned, is to this effect, that acquisitions by means of learning imparted at the family expense constitute the separate property of the acquirer if the learning is of an ordinary description, but form part of the family property if the learning is special or extraordinary. This state of the law, as this Government is advised, differs from that prevailing in Bengal and other provinces; and His Excellency in Council is therefore of opinion that the present Bill may appropriately be dealt with by the local legislature.

8. The *second* point is, whether, under section 43 (5) of 24 and 25 Victoria, Cap. 67, the Indian Councils Act, 1861, the sanction of His Excellency the Governor-General is necessary for proceeding with the Bill. On this it is argued by some that although strictly speaking the measure affects the Hindu law and not the Hindu religion, the Hindu law itself is mainly founded upon religious principles, its propounders being influenced more by spiritual than secular considerations, and that therefore any enactment which modifies the traditional law is at variance with the religious principles on which it is based. On the other hand it is contended that this line of argument is far fetched and that the measure cannot properly be held to affect the Hindu religion within the intention of the statute. His Excellency in Council is disposed to concur in the latter view. If, however, the Government of India should take the other view, I am to request that His Excellency the Governor-General may be moved to accord the sanction required by the statute for the introduction of the measure into the Madras Legislative Council.

9. A copy of this letter, together with its enclosures, will be forwarded for the information of Her Majesty's Secretary of State for India.

I have the honour to be,
Sir,
Your most obedient servant,

G. S. FORBES,
Secretary to Government.

Fort St. George,
16*th February* 1897.

Endorsement—No. 16, Legislative, dated 16th February 1897.

Copy to the Government of India, Home Department, with enclosures.

G. S. FORBES,
Secretary to Government.

Exd. C. M. Thumbuswamy.

GOVERNMENT OF FORT ST. GEORGE.

LEGISLATIVE (1897) *DEPARTMENT.*

Letter to the Right Honourable the Secretary of State for India.

Dated 27th February, No. 4 of 1897.

Forwarding, with remarks, for information, copies of Proceedings of this Government, Nos. 14 and 15, Legislative, dated 16th February 1897, on the subject of the Hindu Gains of Learning Bill.

LEGISLATIVE DEPARTMENT.

Letter—to

The Right Honourable the SECRETARY of STATE for INDIA.

My Lord,

With reference to Lord Cross' despatch, No. 2, Legislative, dated 25th June 1891, and in continuation of our despatch, No. 3, Legislative, dated 10th April 1891, we have the honour to forward, for your Lordship's information, a copy of the Proceedings of this Government, No. 14, Legislative, dated 16th February 1897, together with a copy of the letter addressed to the Government of India, on the subject of the Hindu Gains of Learning Bill.

2. In respect of the question raised in paragraph 2 of Lord Cross' despatch, your Lordship will learn from the accompanying papers the steps that have been taken to ascertain the general feeling of the Hindu community on the subject of the proposed measure. The Bill was published in the Gazette in all the vernacular languages of the Presidency so long ago as 1891; and many of the leading members of the Hindu community have been individually consulted. On a careful consideration of the views thus elicited, we have arrived at the conclusion that we should allow the Bill to take its course in the Legislative Council without opposition on the part of Government.

3. In regard to the observation made in paragraph 3 of the same despatch, we are of opinion that the Bill cannot properly be held to affect the Hindu religion or the religious rites and usages of the Hindus within the intention of section 43 of 24 and 25 Victoria, Cap. 67, and that therefore the previous sanction of His Excellency the Governor-General under that section is not necessary; but we have referred the question to the Government of India, and the mover of the Bill has been requested to defer its further progress until the views of His Excellency the Governor-General in Council on the point have been ascertained.

We have the honour to be,
My Lord,
Your Lordship's most obedient, humble servants,

(Signed) A. E. HAVELOCK.
(„) H. W. BLISS.
(„) J. GROSE.

Fort St. George,
27*th February* 1897.

Endorsement—R. No. 21, Legislative, dated 27th February 1897.

Copy to the Government of India, Legislative Department, with reference to Home Department letter, No. 1130, dated 7th July 1875.

G. S. FORBES,
Secretary to Government.

Exd. C. M. Thumbuswamy.