THE

MOOHUMMUDAN LAW

OF

INHERITANCE,

ACCORDING TO

ABOO HUNEefa AND HIS FOLLOWERS.

WITH

AN APPENDIX,

CONTAINING AUTHORITIES FROM THE ORIGINAL ARABIC.

BY

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TO

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OF

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OF THE HONORABLE EAST INDIA COMPANY;

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OF FORT WILLIAM,

THE FOLLOWING PAGES

ARE MOST RESPECTFULLY DEDICATED.
ADVERTISEMENT.

The following Treatise has been compiled in a great measure from two Arabic works of high celebrity among the Moohummudans of India—the Sirajiyyah, and its commentary the Shureesfeea; and is little more than a condensation of their contents, reduced to an English form. The Sirajiyyah is very brief and abstruse; and, without the aid of a commentary, or a living teacher, to unfold and illustrate its meaning, can with difficulty be understood even by Arabic scholars. It is not therefore matter of surprise, that its Translation by Sir William Jones should be almost unknown to English lawyers, and be perhaps never referred to in His Majesty's Supreme Courts of Judicature in India. With the assistance of the Shureesfeea, it is brought within the reach of the most ordinary capacity; and if the abstract Translation of that commentary, for which we are also indebted to William Jones, had been more copious, thing further would have been requisite to
give the English reader a complete view of excellent system of Inheritance.

The Moohummudan law is founded on *Kooran*, and traditionary decisions of the Prophet and his companions. With respect to the authenticity or meaning of some of these decisions, there may be a doubt in the minds of true Moohummudans. But in matters of Inheritance, I believe, there is less difference of opinion between the four great sects that divide the orthodox Moohummudan world, than on any other branch of the law. The doctrines which are here adduced are those of Aboo Huneefa and his disciples Aboo Yoosuf and Moohummud, which are received by the orthodox Moohummudans of India, and alone formed the law of this country, while under the sway of the Moghul Emperors. The *Imamee* Code is not administered by the Honorable Company’s Courts to Shias, when both parties are of the persuasion. But the general law of the country is still that of Aboo Huneefa, and I am not aware that any other has ever been administered to Moohummudans by His Majesty’s Supreme Court.

Besides the *Sirajiyyah* and *Shureefeeah*, these works are occasionally referred to throughout this essay; but they are chiefly on matters whi
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. — Of the general Application of a Moohummudan's Estate</td>
<td>1</td>
</tr>
<tr>
<td>II. — Of Impediments to Inheritance</td>
<td>21</td>
</tr>
<tr>
<td>III. — Of Parentage</td>
<td>33</td>
</tr>
<tr>
<td>IV. — Of Shares and Sharers</td>
<td>57</td>
</tr>
<tr>
<td>V. — Of Residuaries</td>
<td>71</td>
</tr>
<tr>
<td>VI. — Of the Extractors of Shares</td>
<td>87</td>
</tr>
<tr>
<td>VII. — Of the Arrangement of Estates, where several persons are entitled to participate in the same portion</td>
<td>95</td>
</tr>
<tr>
<td>VIII. — Of the Distribution of Assets</td>
<td>105</td>
</tr>
<tr>
<td>IX. — Of the Return</td>
<td>111</td>
</tr>
<tr>
<td>X. — Of Vested Inheritances</td>
<td>121</td>
</tr>
<tr>
<td>XI. — Of Distant Kindred</td>
<td>127</td>
</tr>
<tr>
<td>Sect. First Class of Distant Kindred</td>
<td>129</td>
</tr>
<tr>
<td>— Second Class of Distant Kindred</td>
<td>140</td>
</tr>
<tr>
<td>— Third Class of Distant Kindred</td>
<td>141</td>
</tr>
<tr>
<td>— Fourth Class of Distant Kindred</td>
<td>148</td>
</tr>
<tr>
<td>— Children of the Fourth Class</td>
<td>149</td>
</tr>
<tr>
<td>XII. — Of Posthumous Children, Missing Persons, Captives, and Persons perishing by a common accident</td>
<td>155</td>
</tr>
<tr>
<td>Sect. Of Posthumous Children</td>
<td>156</td>
</tr>
<tr>
<td>— Of Missing Persons</td>
<td>166</td>
</tr>
<tr>
<td>— Of Captives</td>
<td>171</td>
</tr>
<tr>
<td>— Of Persons perishing by a common accident</td>
<td>172</td>
</tr>
</tbody>
</table>
do not strictly form a part of the Law of Inheritance. The important subjects of parentage, treated of in the third chapter, and of the powers of executors, comprehended in the first, have been drawn entirely from other sources.

The Sirajiyyah and Shureefeeea are printed together, and form one book, the text being distinguished from the Commentary by a line drawn over the former. The references are to the edition published at Calcutta in the year 1236 of the Hijree, the pages of which do not always correspond with the recent reprint. The extracts from the Koodoooree are in general from a manuscript in my own possession; but with the exception of that in the fifth chapter, they may be usually found in the Hidaya, which is little more than a commentary upon that work. The quotations from the Hidaya have been made from the Arabic edition printed at Calcutta. Of Mr. Hamilton's Translation from the Persian, which is also referred to by the volume and the page, for the greater satisfaction of the English reader, there is, I believe, only the quarto edition, published at London, in 1791. The Jawhurrut-oon Nuuyyerah, another commentary on the Koodoooree, is still to be found only in manuscript, though it well deserves in my opinion to be printed. It is of later date than the
Hidayah, and is perhaps more valuable in other respects. The extracts are from a copy which belonged to the late Kazee-ool-Koozzat, and I have been able to indicate them only by citing the book or chapter in which they may be found, in case the reader should have an opportunity, and think it worth his while, to bring them to the test of actual collation. The references to the Inayah, a commentary on the Hidayah, (itself only a comment as already observed,) and the valuable collection of decisions called the Futawa Alumgeere, are made to editions now in the course of publication from the Education Press. The only other work referred to is the Futawa Sirajiyyah; and the extracts have been taken from the edition published in 1827 at Calcutta.

On appearing before the public as the author of even so humble a work as the present, it becomes me to apologize for the errors which, notwithstanding my utmost care, it may be found to contain. No pains have been spared to render it as correct as possible. I have anxiously compared the text several times with the works which are quoted in support of it, and have rigidly discarded every thing for which there did not appear to be sufficient authority. Of my own opinions, the reader will find that I have
been sparing; having hazarded an argument but seldom, and then chiefly on the meaning of my authorities, which it has been my sole object to place before him in the plainest language. It is not without much diffidence, and a painful sense of the responsibility which will attach to me as a member of the legal profession, if I should unhappily become the means of perverting the judgments of my brethren on points which deeply affect the interests of their Mundhumudan fellow subjects, that I now venture to give my performance to the world. From the Attorneys of the Supreme Court, for whose use it was originally undertaken, I am sure of meeting with every possible indulgence. I do not expect less from the candour of the Gentlemen of the Bar. And if my performance should meet with their united approbation, I shall not be apprehensive for the ultimate judgment of the public at large.
The Mohummudan Law of Inheritance.

Chapter I.

Of the General Application of a Mohummudan's Estate.

The property of a deceased Mohummudan is applicable in the first place to the payment of his funeral expenses; secondly, to the discharge of his debts; thirdly, to the payment of legacies as far as one-third of the residue; and the remaining two-thirds, with so much of the other third as is not absorbed by legacies, are the patrimony of his heirs*.

The funeral of a Mohummudan comprehends the duties of washing, shrouding, and interring his body; all of which are to be performed in a manner suitable to his condition†, and even in preference to the payment of his debts, where his property is inadequate to both purposes‡; with the exception however of such as have been charged by pledge

* Sirajiyy 488
† Shureilya, Appendix
‡ Ivi. ya, Appendix
or otherwise on particular property, for the payment of which such property is primarily liable.

Debts of every description take precedence of legacies and the claims of heirs, but debts acknowledged on death-bed are postponed to all others, unless they appear to have been incurred for known and sufficient reasons. With this exception all debts are on an equal footing; no creditor being preferred to another, but all receiving the full amount of their respective claims, or a ratable share of the property where it is inadequate to the complete discharge of all the debts. By a provision perhaps peculiar to the Moolummadan law, debts not actually due at the time of the debtor's death, become payable immediately on the occurrence of that event. This is founded on the consideration that the privilege of postponement is a personal right of the debtor, which dies with him; and, accordingly, the death of a creditor is not attended with the same effect, because the person to whom the right of delay belongs is still alive.

A dispute for priority can seldom arise between the legatees whose interests attach to different portions of the estate. But if such a case should occur, the author of the Shureefeea observes, that the legatee would be entitled to the preference so far as

* Sirajiyyah, Appendix, No. 4.
† Jowhurrut-oon-Nuyyerah, Appendix, No. 5. Ibid, No. 6.
‡ Shureefeea, Appendix, No. 7.
§ Jowhurrut-oon-Nuyyerah, App...
a third of the property*. Thus, if the legacy were a third of the testator's dirhems, or his goats, and two-thirds of them should happen to perish, leaving the remaining third still within a third of his whole estate, the legatee would be entitled to it†. It is only, however, when the articles out of which the legacy is to be paid are homogeneous, as money, goats, and generally such commodities as are estimable by weight or measurement of capacity, that the precedence of the legatee to the heirs can be of any avail to him; for if the articles be of different kinds, as for instance a bequest of a third of the testator's apparel, the apparel being of various descriptions, the legatee would be entitled to no more than a third part of the remainder, in the case of loss, even though the whole of the remainder should still fall within a third of the general estate‡.

The law is so careful of the interests of the heirs, that it protects them against the gratuitous acts of their ancestor upon death-bed, as well as against his bequests, beyond a third of the clear residue of his estate, after the payment of funeral expenses and debts. Accordingly, gifts made in these circumstances must not, together with legacies, exceed the third, unless confirmed by the heirs after the donor's death§; and it is material to observe, that assent

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* Shureefea, Appendix, No. 9.
† Hidayah, Appendix, No. 10, and see Mr. Hamilton's translation, vol. iv. pp. 488 and 489.
before death is not sufficient*. And neither gifts in a last sickness nor legacies are valid to any extent unless so confirmed, where the person in whose favor they are made is also an heir. In like manner, the law is so jealous of the partiality of the deceased for any particular heir, that acknowledgments of debt made on death-bed in favor of an heir are utterly void, unless afterwards assented to by the other heirs†. As the law has placed no control over a husband's power of divorce, he might, by exercising it in his last moments, deprive a wife who had incurred his displeasure of her right of inheritance; but that is obviated by a provision, that a divorced wife shall retain her right of inheritance, unless her husband survives the completion of her iddut, or the period during which it is unlawful for her to enter into another marriage‡. There is one way, however, in which a husband can even upon death-bed materially reduce the share of the inheritance to which his wife would be entitled, that is, by marrying or acknowledging a marriage with another woman, by which means the widow's share would be divided

* Because their right has not yet accrued, and the assent may be annulled upon the death of the testator. Hamilton's Hidayah, vol. iv. p. 470.


‡ Hidayah, Appendix, No. 15. Translation, vol. i. p. 279. The iddut of a divorced woman is in general about three months, when she is not pregnant. Of a pregnant woman, the iddut is not accomplished until her delivery. Ibid, p. 359 and 360.
among both equally. The wife newly married or acknowledged would also be entitled to a reasonable dower; but that as a debt would fall on the general estate*

Women are not entrusted with the power of divorce, but, in the acquisition and disposal of property, even those who are married do not labor under any disabilities, but such as are common to both the sexes. The rules for the succession to a woman's estate are the same as those for the succession to a man's, with this exception, that the share of a husband in his wife's inheritance is double that of a widow in her husband's, as will be seen more fully hereafter.

Though a Moohummudan, is disabled from disposing of more than a third of his property by will, or by death-bed donation, he is nevertheless at liberty to appoint an executor for the administration of the whole, and an important question arises as to the nature and extent of the executor's power over the property. The executor of a father is the guardian of his minor children†, and is in that capacity invested with powers over their property, which are not possessed by ordinary executors. That he may lawfully sell so much of it as is movable, there is no doubt, nor any confliction of authorities upon the point. But his power of disposing of the immovable property of his wards, except under circum-

† Hamilton's Hidayah, vol. iii. p. 520.
stances of necessity or extraordinary advantage, is perhaps open to question. Some difference exists between the older and later writers on this subject, though I have not been able to ascertain the precise sentiments of the former, the only authorities with which I am acquainted being contradictory. In the extract from the Inayah cited below*, it is stated that the sale by an executor of the immovable property of a minor heir was lawful according to the ancients, while, in a passage quoted by Mr. Macnaghten† from the Ashbaho Nuzair, it is represented as their opinion, that such a sale is unlawful. With respect again to the sentiments of the moderns, we are informed by the author of the Inayah, in the extract last referred to, that "they have said an executor may lawfully sell the immovable estate of a minor heir, when the deceased has left debts which cannot be otherwise discharged, or the price is required for the supply of the minor's necessities, or a purchaser is willing to give double the value for the property." The language of this extract is less strong than that of the Ashbaho Nuzair, where the sale of a minor's immovable property is said to be positively forbidden by the moderns, except in the three cases above-mentioned, and in four others of similar expediency or necessity. It is still possible, however, that the circumstances

* Appendix, No. 16.
mentioned by both the authors may be intended only as marks or guides for the father's executor in the exercise of a general discretion which the law has conferred on him, and are not to be considered as indispensable to the creation of such an interest in the immovable estate of his ward as would entitle him to dispose of it. This view of the case is strengthened by two other passages of the *Inayah*, in which the author speaks of the executor's power to sell the immovable property of a minor without any reserve or qualification, assumes and reasons upon it as a thing generally known and admitted, contrasts it with his more limited control over the estates of major heirs, and deduces from it his farther power of making a partition of the deceased's immovable property so far as relates to the portions of minors. The case of partition merits particular attention, because it involves the interests of third parties. The author supposes the deceased to have bequeathed a third of his estate to a stranger, and to have left heirs of the remainder, some of whom are of age and absent, and the others are minor. In these circumstances, if the executor should make a partition of the estate, giving to the legatee his third, and reserving two-thirds for the heirs, the partition is lawful and binding on all the heirs with respect to the movable property, but on the minors only, as to the immovable. "This difference between the

* Appendix, Nos. 17 and 18.
movable and immovable property, arises (as the author informs us) from the fact, that when the heirs are minor, the executor has the power of selling their portions, both of the movable and immovable estate; but when they are of age, he has not the power to sell the immovable estate so far as they are concerned, his authority extending no farther than to the sale of the chattels: and such being the case in sale, so also is it in partition, which is but a species of sale.” The executor being invested with a general power of making a partition of immovable property on behalf of a minor, it may be inferred, that he is placed under no other restraint with respect to the sale of such property, than the obligation of shewing its necessity or expediency, and that an advantage to the minor much more moderate than double the value of the property, would justify him in disposing of it.

With respect to heirs, who have arrived at majority, a father’s executor has no power over their property when they are present; but in their absence he is invested with the general power of preservation, under which he may sell their movable estate, the price being more easily preserved than the actual articles themselves*. It is only, however, with respect to such moveables, as have been left to the absent adult by his father, that the executor is invested with this power†.

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† Futawa Sirajiyyah, Appendix, No. 20.
The executor of a mother, brother, or paternal uncle, is invested with the same general power over the portions of minors and absent adults, as the executor of the father possesses over the property of the latter; i.e. the power of preservation, under which he may sell so much of it as is movable*. But his authority is strictly confined to the property left to the heirs by his testator†.

When the deceased has left debts or legacies which the heirs decline to discharge, the executor may lawfully sell so much of his testator's estate as is requisite for their liquidation, whether the heirs be minor or adult, and however they may have been related to the deceased. Upon these points there is a general agreement of authorities‡. But whether an executor may lawfully sell the whole of his testator's estate when it is not entirely absorbed by the claims upon it, is a question upon which there is some difference of opinion. That he may lawfully sell the whole of the movables, all concur. But with respect to immovable property, according to Aboo Yoosuf and Moohummud, no more of it can be sold by an executor than is necessary for the payment of debts and legacies. Aboo Huneefa, on the other hand, considered, that a power to sell a part implies a power over the whole, and that

† Inayah, Appendix, No. 23.
the remainder may also be lawfully sold by an executor*. In this, as in the case of a guardian, it is proper to distinguish between the strict legal right, and its discreet and judicious exercise; and it would seem that though an executor be actually possessed of funds of the deceased, adequate to the discharge of his debts, yet that if he do proceed to sell his immovable estate, the sale is notwithstanding lawful†.

When two executors have been appointed, one of them cannot lawfully act without the concurrence of the other, according to Aboo Huneefa and Moorhummud, except in the following instances; viz. the purchase of requisites for the funeral, and of food and clothes for young children, the restoration of articles which had been deposited with the testator, or usurped by him, or acquired under defective contracts of sale, the general preservation of his property, the payment of debts, the discharge of specific legacies, the manumission of a specific slave, the litigation of the deceased’s rights, the acceptance of gifts, the sale of articles to which any loss or damage may be


† Futawa Alumgeeree, Appendix, No. 28. This point is of so much importance, that I subjoin a literal translation of the authority. “An executor sold land to pay a debt of the deceased with its price, having property in his hands sufficient to the discharge of the debts; this sale was lawful. So in the Khuznoot-ool-Mooffieen.”
apprehended, and generally of all perishable commodities*.

*Aboo Yoosuf* was of opinion, that executors may act singly in all cases, though appointed together; and there is no doubt that they may do so when they have been appointed separately†. So also, where it is clearly indicated from other circumstances, that such was the intention of the testator.

Upon the death of one of two executors, the rights enjoyed by both do not accrue to the survivor, whose powers are suspended until the appointment by the kazee of a successor to the deceased executor, unless the deceased executor had himself nominated the survivor or some other person to be his executor. And even, when so nominated, *Aboo Huneefa* was of opinion, that the survivor cannot lawfully act until the kazee has appointed another executor, because if the testator had been content with the discretion of one person in the management of his affairs, he would not have committed it to two persons‡.

When a sole executor dies, having appointed an executor of his own will, the person so appointed becomes also the executor of the original testator, according to the general consent of the followers of *Aboo Huneefa §.*

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‡ Jowhurrut-oon-Nuuyerah, Appendix, No. 31.
§ Ibid, Appendix, No. 32.
The clear residue of the estate, after the payment of funeral expenses, debts, and legacies, descends to the heirs; and among these the first are persons for whom the law has provided certain specific shares or portions, and who are thence denominated Sharers*. In most cases there must be a residue after the sharers have been satisfied; and this passes to another class of persons who from that circumstance may be termed Residuaries†. The name, however, is not always appropriate, for it may happen that the deceased has not left any relative of the class of sharers, and then the whole will pass to one or more individuals of the second class. When there are sharers but no residuaries, the surplus, which would have passed to the latter, reverts to the former with two exceptions, being divisible among them, according to the respective amounts of their shares; and this right of reverter constitutes what is technically called the return‡. It can but seldom happen that the deceased should leave no individual connected with him who would fall under one or other of the classes already mentioned. But to guard against this possible contingency, the law has provided another class of persons, who, though many of them are nearly related to the deceased, have yet been deno-

* Sirajiyyah and Shureefea, Appendix, No. 33.
† Sirajiyyah, Appendix, No. 34.
‡ Sirajiyyah and Shureefea, Appendix, No. 35.
minated distant kindred, by reason of their remote position with respect to the inheritance*.

Of the three classes of heirs before-mentioned, the two first are by far the most important, as none of the distant kindred can ever be admitted to a participation in the inheritance so long as there is a single sharer or residuary to claim it. The heirs of a Moohumudan, might therefore, for all practical purposes, be divided into two classes, sharers and residuaries; and these are so distinct from each other, and the rules for their succession also so entirely dissimilar, that we may be apt to infer that the law respecting them was drawn from different sources. This conclusion seems to be justified by the manner in which the two classes are treated of in the Kooran. The sharers and their portions are specifically laid down in that book, while of the residuaries there is only incidental mention as usubat or heirs†; the name by which they are still distinguished by Moohumudan lawyers. They are, however, alluded to in such a manner, that it is obvious their rights were sufficiently understood and acknowledged by the persons to whom the Kooran was addressed.

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* Sirajiyyah, Appendix, No. 36. Arabic Zuwee-l-urham, which may be more literally translated, uterine relatives.

† "The Arabic verb āsūba primarily signifies to collect and bind together the branches of a tree: hence the secondary sense, to constitute the heir and head of a family." Note to Translation of the Bigyato'ol b'ahith, by Sir William Jones. Quarto edition of works, vol. iii. p. 496.
And the law respecting them is in fact referred to traditionary decisions of the prophet and his companions. In the Bigyato't b'ahith, which professes to contain the doctrine of inheritance as delivered by Zeid the son of Thabit, the residuaries and the order of their succession are as distinctly stated as in the Sirajiyah. And Zeid was not only one of the prophet's companions, but was expressly recommended by him to his followers as their instructor in the law. How then shall we account for the omission of so important a class of heirs in the Kooran, comprehending, as it does, those who by the common consent of mankind are the best entitled to the succession of a deceased person, namely his sons? To me it seems probable, that the law respecting the residuaries is a relic of the old system of inheritance of the Pagan Arabs, and that the doctrine of shares was superinduced by Moohummud, or if it existed previously to his time, was at least so materially altered by him, as to require, in his opinion, the divine sanction to secure its reception by his countrymen*.

* Upon this supposition, there would appear to have been a strong resemblance between the law of inheritance of the old Arabs, and the system of the Romans, before it was remodelled by Justinian. It is impossible to trace the analogy without anticipating the subjects of the fourth and fifth chapters; but the point is curious and interesting, and the reader will pardon me for dwelling on it for a few minutes. The foundation of inheritance under the law of the Twelve Tables was the preservation of families, and, as daughters became by marriage members of other families, their
Should there be neither sharer nor residuary, nor any of the distant kindred alive and capable of in-
descendants were constantly excluded. Thus the heirs were, first
children, next the children of sons, then the children of sons' sons,
and so on ad infinitum. It was a saying of the Khuleef Allee, that
the children of his sons were his own children, but those of his
daughters, the children of other men. And the reader will find
hereafter that the residuaries of the Moohummadan law are, first
sons, then their sons, then the sons of their sons, and so on without
limit. As the law now exists, females are residuaries with males
of the same degree, that is, daughters with sons, and sons' daughters with sons' sons, &c.; but this may have been an addition
made by Moohummud, as the residuary rights of females are founded
on a text of the Kooran; though it is also possible that he only
revived a provision of the old law. It is not improbable that both
by the old Romans and the Arabs, as well as other partially civili-
zized nations, the rights of females were originally little regarded,
and that daughters were in practice left dependant on sons under
both systems, though perhaps not positively excluded by either.
By one of the strongest peculiarities of the old Roman law, the
patria potestas, children were incapable of acquiring property
during the life of the ancestor in whose power they happened to
be; and the succession passed as a matter of necessity from de-
scendants to collaterals, among whom it was regulated by the same
constant principle of the exclusion of the descendants of females.
Thus, the first of the collateral heirs were brothers and sisters, then
the children of brothers, and so on, in the same manner, through
the remoter branches. There is no trace of the patria potestas,
in the Arabian system, and, after exhausting the line of descendants,
the inheritance ascends; but here the succession is still marked
by the same uniform selection of males and persons connected with
the deceased through males. Thus among ascendants, the first
residuary is the father, the next his father, and so on ad infinitum.
The rights of the mother and grand-mothers are blended with
those of the father and grand-fathers, in the same manner as the
heriting, "the estate goes (unless there be a widow or widower who is first entitled to a share) to him

rights of female descendants are mixed with those of males of the same degree. But this also may be said to have been superadded by Moomummud to the old system, for it is a consequence of a rule which is found in the Kooran. In the collateral line the residuaries are first brothers, with whom sisters are united in the same way as daughters with sons; next the sons of brothers, and so on without limit through their descendants, and then in like manner through the remoter lines. But for the exclusion of ascendants under the civil law, and the principle of representation which seems to have existed in it from the earliest times, the residuary system of the Moomummedans, and the law of inheritance of the Twelve Tables, would have been not so much similar as identical. The leading characteristic of both laws, the constant exclusion of the descendants of females, was gradually relaxed among the Romans by the edicts of praetors and the constitutions of some of the emperors; but not finally abolished until the time of Justinian, who placed relatives connected with the deceased through females, or cognates, on the same footing with those connected through males, or agnates, and opened the succession to ascendants, after the line of the descendants is exhausted. The alterations of Moomummud were less sweeping, but perhaps not less just and wise. He not only modified the severity of the old law, by admitting females to a participation in the inheritance with males of the same degree, but, by his doctrine of shares, which allows of the simultaneous succession of relatives of different lines, that is, of ascendants with descendants, he provided for all who, by their age, sex, and propinquity, may be supposed to have been dependant upon the deceased, while in other respects he left the law as he found it. Justinian, on the other hand, may be said to have entirely reconstructed the Roman Law of Inheritance, yet his system requires the entire exhaustion of one line before any individual of another can be called to the slightest participation in the
who may be called the successor by contract." The form of this contract is as follows: if a person of unknown descent say to another, "Thou art my Mowla, (master,) and shalt inherit to me when I die, paying my fine when I commit an offence," and the other answer, "I have accepted," the contract is valid; and if the person addressed be also of unknown descent, and make the same proposal, which is in like manner accepted, they become mutually liable for the fines of each other, and the survivor is the heir of his fellow. The maker of a contract of this kind may, however, at any time retract, until his mowla has actually paid a fine on his behalf.

Next to the successor by contract is a person in whose favor the deceased has made an acknowledgment of kindred, but of such a nature as not to establish his consanguinity, and has persisted in such acknowledgment to his decease. To render an acknowledgment of this kind valid, three conditions must be observed. First, it must be in such terms as

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† Sirajiyah and Shureeflea, Appendix, No. 37.
‡ Sirajiyah, Appendix, No. 38.
at least to imply the descent of the person acknowledged from some other person than the acknowledged himself. Thus, if one acknowledges as his brother a person of unknown descent, the term implies that the person acknowledged is the child of the acknowledged's father*. But if the acknowledgment were in terms so vague as our English expression cousin, for instance, without any thing to qualify it by which the descent might appear, it would seem to be defective under this condition. Secondly, the acknowledgment must be such as not to establish the descent of the person acknowledged; for if it were sufficient to the latter purpose, (as for instance an acknowledgment of one as a brother assented to by the acknowledged's father, which under some exceptions would establish the paternity,) its effect would be to give him an interest in the inheritance on a distinct ground from the acknowledgment, namely as brother to the deceased†. And the third condition is, that the acknowledged should die without retracting the acknowledgment, the reason of which is obvious‡.

When the remoteness of the contingency is considered, it may be thought that too much has been said on this subject. But in a country so extensive as Hindoostan, still composed of different states, whose

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* Shureefea, Appendix, No. 39.
† Shureefea, Appendix, No. 40.
‡ Shureefea, Appendix, No. 41.
inhabitants are frequently moving from one extremity of it to another, and subject to the influx of strangers from all parts of the world, it must occasionally happen that a person dies without leaving any known relatives, and in such a case it is by no means unusual to exercise the power in question.

Though the law does not allow a Moolummudan the power of disposing by will of more than a third of his property, still if he has appointed a legatee of the whole, and has left no known heir, nor successor by contract, nor person acknowledged as last mentioned, such legatee is permitted to take the property; for the prohibition against bequeathing more than a third exists solely for the benefit of the heirs.

Last of all, when there is none of the persons before mentioned to claim the property, it falls to the Beit-ool-mal, which is usually, and with sufficient propriety, translated the "public treasury," and for which the British Government has, I believe,

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* In one of the most important cases that has occurred in this country, since it fell under our dominion, as well for the amount of the property in dispute, as on account of its connection with the judicial administration of Bengal, the heir was a person who claimed as having been acknowledged in this manner by the deceased. I mean the great Patna cause, decided in the time of Mr. Hastings, if it can be said to be yet fully decided, for a claim to part of the property is still under appeal to the Lords of the Privy Council.

† Sirajiyyah and Shareefeen, Appendix, No. 42.

‡ Sirajiyyah, Appendix, No. 43.
substituted itself in this country as ultimus hæres to its subjects. The *Beit-ool-mal* is not the property of the ruling power, but that of all Moohummudans, for whose benefit it must be administered; and it may perhaps be questioned, how far our Government, in taking possession of the property of one of its Moohummudan subjects as an escheat, would be justified, under the Moohummudan law, in applying it to the general purposes of the state, or in any other way, than for the exclusive benefit of Moohummudans.
CHAPTER II.

Of Impediments to Inheritance

There are four impediments to inheritance under the Moohummudan law: slavery, homicide, difference of religion, and difference of country.

1. Slavery is either perfect or imperfect; and of imperfect slaves there are three descriptions: the Mookatub, whom his master has agreed to emancipate for a specified reason; the Moodubbur, to whom he has promised gratuitous emancipation after his death; and the Qom-i-wulud, who has borne a child to her master, and is thence entitled to her liberty at his death. But bondage, whether absolute or qualified, is equally a bar to inheritance; because a slave is incapacitated from acquiring property by any means; and because, if he were capable of inheriting from his own relatives, their succession would fall to his master, to whom everything in his hands belongs, and who might thus in effect succeed to the property of a person to whom he was an absolute stranger.

* Siajiyyah, Appendix, No. 43
† Shareeeg, Appendix, No. 45
It occasionally happens that a slave, who is the property of several persons, is emancipated by some, and retained in servitude by others. In this situation he is entitled to complete emancipation, on performing emancipatory labor for a due proportion of his value*. Yet even under circumstances comparatively so favorable, the incapacity to inherit is not removed according to Aboo Huneefa. Both Aboo Yoosuf and Mookummod, however, consider that a slave who is partly emancipated is in effect free, and enjoys the right of inheritance with the other privileges of freedom†.

2. Homicide is so far an impediment to inheritance, that the slayer is precluded from succeeding to the property of the person whom he has slain; but this consequence attaches to such homicides only as are punishable by retaliation, or require to be expiated in one of the modes prescribed by law‡. Of homicides of this description there are three kinds. First, intentional homicide, which subjects the perpetrator to retaliation, and is committed when a human being is wilfully and illegally struck with some deadly instrument, and death is the consequence. According to Aboo Huneefa, the instrument must be either a weapon, or something which may be employed instead of a weapon for separating the parts of the body, as a sharpened

* Hidaya, Appendix, No. 46; Translation, vol. i. p. 440.
† Shurëfees, Appendix, No. 47.
‡ Sirajiyyah, Appendix, No. 48.
piece of wood or stone; but the disciples reject this distinction, and account the homicide intentional, if the instrument be of such a nature that death would generally ensue from its blow, as a large stone*. Second, homicide which from its similarity to the first is called quasi intentional, and differs from it only in the instrument of violence being of such a nature, that its blow would not generally produce death†. Of this offence the penalty is expiation, by emancipating a Moomhumudan slave, or fasting for two months in succession; besides a heavy fine of a hundred female camels, of different ages, which is leviable from the Akila, or neighbourhood of the slayer‡. The third species of homicide which operates as an impediment to inheritance is, where a person is killed by mischance, as if one shooting at game should hit a human being instead, or a person were to roll over another in his sleep and kill him, or fall down upon him from a terrace, or let a stone drop from his hand upon him, and death should ensue§. In all these cases, it will be observed, that however innocent of any intent to kill or inflict injury, the slayer is the immediate cause of the sufferer's death; and he is consequently liable to a penalty by way of expiation; his neighbourhood being at the same time subject to a fine, which differs only in a trifling

* Shureefeea, Appendix, No. 49.
† Shureefeea, Appendix, No. 50.
§ Shureefeea, Appendix, No. 51.
degree from that already mentioned*. But when a person is merely the occasion of another's death, as by digging a well in ground not his own into which one falls, or placing a stone upon it against which one stumbles, and death is the consequence in either case, he is neither liable to expiation nor subject to the incapacity of inheritance; though the neighbourhood is still liable to a fine†, which, as in the former cases, sinks into the estate of the deceased, and forms a part of his succession.

There is one instance of intentional homicide, where the crime induces the incapacity of inheritance, though the offender is not subject to retaliation. This is the case of a son murdered by his father. But it is properly an exception to the law of retaliation, the crime having been originally subject to this highest penalty, though it was remitted by the prophet‡.

3. Difference of religion is such an impediment to inheritance, that an infidel cannot, in any case, be heir to a believer, nor a believer to an infidel||. All infidels, however, who, in questions of inheritance are considered of one religion, are capable of inheriting to each other, however different their actual

* The expiation for homicide by misadventure is the same, as for quasi intentional. Hamilton's Hidaya, vol. iv. p. 329.
† Shureefseea, Appendix, No. 52.
|| Shureefseea, Appendix, No. 54.
creeds may happen to be*. Ibn-Abee Luela received the latter doctrine with some degree of qualification. He was of opinion, that Jews and Christians might succeed to each other, because they agree in the two important points of the unity of God, and the divine legation of Moses; but that neither of them could inherit from a Mujoosee, nor he from them, because he denies the unity, recognising two Gods, Yuzdan and Ahrimun†, and neither acknowledges the mission of the prophets, nor possesses any of the Sacred Scriptures‡. Others carry the distinction so far as to deny, that Jews and Christians can inherit to each other, because they differ as much with respect to Christ, as Moslems do from both respecting Moohummed§. Free-thinkers are not disabled from inheriting to Moohummedans, because they concur in the belief of the Prophets and the Scriptures, and differ only in their interpretation of the latter, and of the traditions||. But apostates are declared to be incapable of inheriting to any one, even to apostates like themselves|||; partly as a punishment for their guilt in abandoning the faith, and also because they are not considered to be of any religion; the law refusing

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* Shureefeea, Appendix, No. 55.
† The principles of good and evil.
‡ Shureefeea, Appendix, No. 56.
§ Shureefeea, Appendix, No. 57.
|| Shureefeea, Appendix, No. 58.
||| Sirajiyah, Appendix, No. 59.
to acknowledge them as belonging even to that to which they have apostatized*.

The Moslem heirs of an apostate are not deprived of their right of inheritance, with the exception of a husband or wife, who are excluded, because the marriage, which is the basis of their right, is dissolved by the apostasy of either party†. Apostasy being a voluntary act, a husband is not excluded from the succession to his wife, if she has apostatized in extremis‡, nor a wife from the succession to her husband, if, before the expiration of her iddut, he is put to death for his apostasy, or dies naturally, or is judicially pronounced to have taken refuge in a hostile country§.

A male apostate is liable to be put to death, if he continues obstinate in his error∥; for which Aboo Huneefa has assigned this among other reasons, that he is to be viewed in the light of an enemy who has entered the Moohummudan territories without protection. An enemy in such circumstances is deprived of the use of his property, his power over which is suspended until it is determined whether he shall be put to death or reduced to slavery; and, according to Aboo Huneefa, a male apostate is in like manner disabled from selling or otherwise disposing of his

* Shureefeea, Appendix, No. 60.
† Shureefeea, Appendix, No. 61.
∥ Futawa Alumgeeree, Appendix, No. 64.
property. But Aboo Yoosuf and Moohummad differed from their master upon this point; considering a male apostate to be as competent to the exercise of every right, as if he were still in the faith*. There was also a difference of opinion between the master and his disciples, with respect to the distribution of a male apostate's property at his death, or escape to a hostile country and judicial declaration of that fact. Aboo Huneefa distinguished between acquisitions made before and subsequent to the apostasy, declaring the former to be the property of the heirs, and the latter to belong to the Beit-ool-mal; while Aboo Yoosuf and Moohummad, rejecting this distinction, maintained the right of the heirs to the whole property†.

A female apostate is not subject to capital punishment, though she may be kept in confinement until she recants‡; and with respect to her property, the whole of it, without distinction, and by the general consent of the learned, descends to her Moohummadan heirs§, with the exception of her husband, as already mentioned. There seems to be a like uniformity of opinion regarding the validity of a female apostate's disposal of her property, the argument of Aboo Huneefa in the case of males being inapplicable to women, who can never be considered enemies||.

† Sirajiyah, Appendix, No. 66.
§ Sirajiyah, Appendix, No. 68.
When the apostate has taken refuge in a hostile country, he becomes an alien enemy, and his Moohummadan heirs are precluded from succeeding to any property which he may have acquired subsequently to that period, by the next impediment to inheritance, which is difference of country. In this respect, male and female apostates are on the same footing by the general concurrence of the learned*.

The general rule respecting infant children is that they are to be considered of the same religion with their parents. But where one of the parents is a Moohummadan, and the other of a different persuasion, as a Christian or Jew, the infant shall be accounted a Moohummadan, on the principle, that where the reasons are equally balanced, the preference is to be given to that religion as the more worthy in the eye of law†.

IV. The last impediment to inheritance is difference of country; which is either actual, as between an enemy and a Zimmee‡; or constructive, as between a Zimmee and a Moostamin§, or between two

* Desertion to a foreign country and judicial declaration of the fact amount to civil death; hence the right of the deserter's heirs to take immediate possession of his property, as in the case of natural demise. Apostasy has not that effect; and the distinction is of some consequence in this country, where the capital penalty cannot be enforced.

† Ilidaya, Appendix, No. 70. Translation, vol. i. p. 177. Shureefeea, Appendix, No. 71.

‡ Tributary infidel.

§ Literally "one who has sought protection," but applied to all foreigners living by permission in the Moohummadan territories.
Moostamins from different countries*. When an enemy dies in a hostile country, leaving within the Moohummudan territories, a father or son who is a Zimmee, or a Zimmee dies in the Moohummudan territories, leaving a father or son who is an enemy and residing in an hostile country, neither can succeed to the other, though they should be of the same religion, because their countries are actually different, the Zimmee being to all intents and purposes a subject of the Moohummudan state†. The case is so far different with respect to a Zimmee and a Moostamin, that for the time they are both inhabitants of the same country; but their condition is not the same, the Zimmee being, as already observed, the subject of the Moohummudan state, to which he pays tribute and owes allegiance, and being no longer at liberty to return to the place of his birth. The Moostamin, on the other hand, is only on sufferance in the Moohummudan territory, where he is not permitted to remain longer than a year, and during that time he neither pays tribute, nor is debarred from returning to the country from whence he came, and to which he is held to belong. It is not to be wondered at, therefore, that the Zimmee and Moostamin should be accounted in law as of different countries, and consequently incapable of inheriting the one to the other‡.

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* Sirajiyya, Appendix, No. 72.
† Shureefeea, Appendix, No. 73.
‡ Shureefeea, Appendix, No. 74. For the law respecting Moostamins, see the Translation of the Hidayah, vol. ii. Book of Institutes, chap. vi.
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* Sirajiyya, Appendix, No. 72.
† Shureefea, Appendix, No. 73.
‡ Shureefea, Appendix, No. 74. For the law respecting Moostamins, see the Translation of the Hislaya, vol. ii. Book of Institutes, chap. vi.
Countries differ from each other by having different sovereigns and armies*; but Moohummudans, though no longer subject to the sway of one prince, are still accounted of the same country, being connected together by the tie of their common religion. Difference of country is consequently no impediment to inheritance, so far as they are concerned†. It is also liable to some modification with respect to unbelievers. In the early ages of the Moohummudan religion, all who were not for it were considered to be against it, and every infidel was an enemy, on whom it was the sacred duty of the true believer to wage war until he embraced the faith or consented to pay tribute. In later times some practical relaxation of this doctrine became necessary; and we accordingly find the Turks and some other Moohummudan nations entering into treaties of peace, and even offensive and defensive alliances, with people of a different faith. Difference of country is no impediment to inheritance, between the subjects of kingdoms between which there subsist engagements for mutual assistance against enemies‡; and a simple treaty of peace would probably have the same effect, though the authorities are not so express upon this point. The reason assigned by the author of the Sirajiyyah, for the difference of country being a bar to inheritance, is the want of mu-

* Sirajiyyah, Appendix, No. 75.
† Shureefeen, Appendix, No. 76.
‡ Shureefeen, Appendix, No. 77.
tual protection to the subjects of different states*; and it is applicable only to a state of actual warfare, which was probably the condition of the whole world, so far as the author was acquainted with it, at the time that he wrote. The comment on the text also implies a state of hostilities; for it supposes by way of illustration, that if a soldier of one of the states fall in the way of the troops of the other, they may lawfully put him to death†. It seems therefore probable that in the present age of the world, the subjects of different countries may lawfully inherit to each other, if there be no other legal impediment, unless their governments be positively opposed in actual warfare.

Of all the disqualifications above enumerated, the effect upon the person subject to them is absolute exclusion from the right of inheritance, and upon all others the same, as if the disqualified person were actually dead‡. This certainly appears to be the natural consequence, according to our ideas, and would probably be taken for granted by the reader at this stage of his progress. But he will see hereafter, that while the existence of a particular heir has the effect of entirely excluding from the inheritance some persons who would otherwise be entitled to participate in it, it merely reduces the shares of others from a higher to a lower degree, which is called in law par-

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* Sirajiyyah, Appendix, No. 75.
† Shureefee, Appendix, No. 78.
‡ Sirajiyyah and Shureefee, Appendix, No. 79.
tial exclusion. *Ibn Musood* contends, that a disqualified person, though he is himself incapable of deriving any benefit from his relationship to the deceased, is nevertheless the means of partially excluding others*. Thus, to take a case which actually occurred in the time of the *Khuleef Alee*, the fourth successor to *Moohummud*, a Moohummudan woman died, leaving a husband and two half-brothers by the same mother, all of whom were of the faith, and a son who was an unbeliever. Here the son was of course disabled from inheriting by reason of his unbelief; but according to *Ibn Musood*, his mere existence ought to have partially excluded the husband by reducing his share from a half to a fourth. The *Khuleef*, however, and *Zeid Ibn Thabit*, decided that the son was to be considered in the same light as if he were dead, and they awarded one-half of the inheritance to the husband, one-third to the brethren, and the remainder to the residuary heirs†. This decision was approved by *Aboo Hu-neefa* and his followers, and they have accordingly adopted the principle on which it was founded.

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* Sirajiyyah, Appendix, No. 80.
† Shureefseea, Appendix, No. 81.
CHAPTER III.

Of Parentage.

The right of inheritance depends in every case on the existence of some relation, either natural or artificial, between the deceased and the person who claims to be his heir. The few artificial relations which confer the right of inheritance have been sufficiently noticed in the first chapter, with the exception of marriage, into the consideration of which I could not enter without too great a departure from the proper subject of this essay. It is besides fully treated of in the *Hidayah*; and to the translation of that work by Mr. Hamilton, I beg leave generally to refer the reader, though some incidental notice of the evidence necessary to the establishment of marriage will be found towards the close of this chapter. All natural relations may be ultimately reduced to that which subsists between parent and child; and a good deal respecting it may also be found in the *Hidayah*, but it is dispersed through different parts of the work; and I have never met with a connected view of the subject in any treatise on Mohum- mudan Law. I therefore propose to collect in this place, some of the most important passages from the principal authorities on this branch of the law, pla-
cing them to the best of my power before the English reader in the order that appears to me to be the most natural.

The relation between a mother and her child is held to be sufficiently established by evidence of its birth, whether it be the fruit of lawful intercourse, or not*. The descent of a child, on the other hand, from a particular man can never be established, where his intercourse with its mother was not lawful†. There is an obvious difference between the two facts considered with respect to their susceptibility of proof, which appears to be the ground of this marked distinction in the law‡.

All intercourse between the sexes is unlawful, where there is neither marriage nor the semblance of it between the parties, and the man has neither a right of property, nor the semblance of such right in the woman§. A man may lawfully have at one time so many as four wives, provided that they are of his own faith, or Christians, or Jews; and the law has prescribed no limit to the number of slaves with whom he may legally cohabit. But intercourse between the sexes, where the woman is neither the wife nor slave of the man, is zina or fornication||, and is severely punishable; being visited, in its more ag-

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* Futawa Sirajiyyah, Appendix, No. 82.
† Jowhurrut-oon-Nuyyerah, Appendix, No. 83.
‡ Imayah, Appendix, No. 84.
§ Jowhurrut-oon-Nuyyerah, Appendix, No. 85.
|| Hidayah, Appendix, No. 86; Translation, vol. ii. p. 18.
gravated form of adultery, on the married party, with the heaviest penalty of the law, or stoning to death. To constitute moral guilt, there must be a guilty knowledge on the part of the agent, and whenever that knowledge is absent, the specific punishment of fornication is not inflicted: but the waiving of the punishment does not legalise the act; and it is only in cases where a doubt attaches to the illegality of the intercourse, or as before expressed, where there is a semblance of marriage, or of a right of property in the woman, that even an express acknowledgment or claim by the man, of the children who are the fruit of the intercourse, can establish their descent from him*. The cases in which such a doubt of the illegality exists, as to render the establishment of the children’s descent possible, are the following, as stated in the authorities cited below†. 1. Where the woman is the slave of the man’s son, or of his son’s son. 2. Where she is in her iddut after a complete divorce by implication. 3. Where the woman is a slave sold by the man, but not delivered to the purchaser. So also where she is the slave of his Mookatub‡, or of his licensed slave§. 4. Where she is a slave

* Hidayah, Appendix, No. 86. Futawa Alumgeereee, Appendix, No. 87.
‡ See page 21.
§ That is, a slave licensed by his master to trade.
assigned to a wife as her dower, but is still undelivered. 5. Where she is a slave held by the man in common with other persons as partners. 6. Where she is a slave impounded, and is carnally enjoyed by the pledge. In the above cases the descent of the child, which is the fruit of the intercourse, is established from the man, if he claim or acknowledge it; but otherwise not. To these may perhaps be added the case of a marriage contracted without witnesses, and one where the woman is still in her iddot after separation from another man*. Marriage in these circumstances is not strictly legal, but there is such a semblance of legality as appears to withdraw the intercourse from the opprobrium of fornication, and to render the offspring the husband's, if claimed by him. It must be observed, however, with respect to the former, that the presence of witnesses is essential to the actual constitution of marriage†, which seems to be inconsistent with even such a shade of legality as would render the establishment of the descent possible.

To establish the descent of a child from a man, it is necessary that the relation between its parents, which legalises their intercourse, should have subsisted at the supposed period of its conception. Accordingly, if a married woman should produce a child within six months from the date of her marriage, which is the shortest period of gestation in the

* Jowhurrut-oon-Nuyyerah, Appendix, No. 85.
† See post. page 48.
human species, according to the Moohummudan lawyers, its descent is not established from her husband unless he claims it*; and even in the event of his claiming it, if he should admit that it was the fruit of fornication, its descent is not established†. In like manner, the child born to a slave girl, within six months from the day on which she was purchased, does not belong to the buyer, but to the seller. The slave herself also reverts to the seller, to whom she has now become an oom-i-wulud by bearing him a child, which renders the sale unlawful; and it is accordingly cancelled and the purchase-money restored‡.

According to the followers of Aboo Huneefa, there are three steps or degrees in the establishment of descent; meaning the descent of a child from a man, for with respect to its mother, proof of its birth, as already observed, is all that the case requires or admits of. The first step is a valid marriage, or a marriage of which (though defective in some respects), the defect is not such as to reach anything essential to the contract. The second is the peculiar relation which subsists between a master and his slave, when she has already borne him a child, and becomes his oom-i-wulud. The third is the simple relation of master and slave. Marriage, which is the first degree, differs from the others in so much that the descent

* Futawa Alumgeeree, Appendix, No. 90.
† Futawa Alumgeeree, Appendix, No. 91.
of a child is established from the husband of its mother, without any claim or acknowledgment upon his part; (that is, where the birth has taken place at a due time after the solemnization of the marriage;) and cannot be repudiated by a simple denial, nor any thing short of the solemn form of lian or imprecation; whereby the husband formally charges his wife with adultery, repudiates her offspring, and imprecates curses on his own head if he has accused her falsely. It is only where both the parties are free, adult, of sound mind, and Moosulmans, that the case is susceptible of lian; and it is only in cases to which the lian is applicable, that a child, born at a due time after marriage, can possibly be repudiated by the husband of its mother. To guard against the abuse of so extraordinary a power, the husband is allowed but a short time for its exercise. According to Aboo Huneefa, the child's descent is established, unless denied by the husband previous to its birth; and though his disciples Aboo Yoosuf and Moohuymud have allowed of a slight enlargement of the period for coming to a determination on so important a point as the rejection of offspring, they both agree that it should not be long.

When a slave has already borne a child to her master, her condition is materially improved. She

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• Futawa Alumgeeere, Appendix, No. 93.
† Hamilton's Hidaya, vol. i. p. 344.
‡ Appendix, No. 93.
§ Hamilton's Hidaya, vol. i. p. 352.
can no longer be sold, and is entitled to her freedom at his death. She thus acquires the character of a fixed member of his family, and any child whom she may subsequently bring forth, is so far presumed to have been begotten by him, that its descent is established without any claim or acknowledgment upon his part. Its condition, however, differs in one respect from that of a child begotten in marriage, that it is liable to repudiation by a simple denial*. But there is a limit to the exercise of this power; for if the paternity has once been judicially declared, or a long time has been allowed to elapse after the birth of the child, it can no longer be repudiated†. When it is said that the child of an oom-i-wulud is presumed to be her master’s, this must be understood with some qualification; for if, at the supposed period of the child’s conception, the intercourse of the master had, by reason of any supervening circumstance, ceased to be lawful, as for instance, by his entering into an agreement with her of kitabay or emancipation for a specific ransom, or having sexual intercourse with her mother or daughter, the child must be claimed in order to establish its descent from the master of the oom-i-wulud‡.

* The last degree in the establishment of the paternity of a child is when it is born to a slave girl, who has never before borne a child to her master; and in that case, it is not accounted his without an express claim or acknowledgment of it as his offspring§.

* Appendix, No. 93. † Ibid. ‡ Appendix, No. 93. § Ibid.
The only legal slaves are captives in religious warfare, or wars undertaken for the propagation of the Moohummudan faith, and the descendants of such captives. Of these, there are probably very few in the British dominions in India; and to constitute the legal descent of a child from a man in this country, it must therefore, in general, be necessary, that it should have been begotten in marriage. It does not follow, however, that in all cases of disputed paternity, the marriage of the child's parents must be proved. The constitution of the relation and its proof are obviously distinct. The latter, as a branch of the general subject of evidence, does not fall within the limits of this essay: but a few words on the effect of acknowledgment, considered as a means of establishing the relation of persons to each other, may not be superfluous in this place. And to these I shall add some observations respecting the indirect means of inferring marriage, and consequently the descent of children, afforded by the continued cohabitation of parties.

Acknowledgment is in some instances sufficient evidence of parentage; but there are three conditions necessary to its validity. 1. The ages of the acknowledger and the person acknowledged must be such, as to admit at least of the possibility of their standing to each other in the relation of parent and child. 2. The person acknowledged must be of unknown descent. And 3. he must believe, or assent to the fact of his being the acknowledger's child.

* In[yah, Appendix, No. 94.
To bring an acknowledgment within the limits of the first condition, the acknowledger, if a female, must be nine years and a half, and if a male, twelve years and a half, older than the person acknowledged*. The second condition guards the doctrine of acknowledgment from being made a means of adoption, to the prejudice of the proper heirs; as a descent which is established from one person cannot be transferred to another†. The third condition is to be understood with some qualification; for the assent of an infant, too young to be able to give any account of himself, is not requisite to the validity of an acknowledgment‡.

When the preceding conditions concur in an acknowledgment of parentage, the person acknowledged becomes an heir of the acknowledger, and is entitled to a full participation in his inheritance with the other heirs of the same description; even though he were sick at the time when the acknowledgment was made.§

The doctrine of acknowledgment is applicable to the establishment of other degrees of kindred, besides that of parentage. The acknowledgment of a man is valid with respect to his father, mother, child, wife, and emancipator; whether made in health or in sickness: but the assent of all the persons ac-

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* Jowhurrut-oon-Nuyyerah, Appendix, No. 95.
† Ibid. Appendix, No. 96.
‡ Ibid. Appendix, No. 97, and see Hamilton’s Hidaya, vol. iii. p. 170.
§ Jowhurrut-oon-Nuyyerah, Appendix, No. 98.
knowned is necessary to the establishment of the relation between the parties, subject to the limitation already noticed with respect to the assent of children*. The acknowledgment of a woman is also valid with respect to her father, husband, and emancipator†; but not so with respect to her child, because its effect, if allowed, would be to impute the child to her husband‡. This exception is to be understood only of a woman who is married, or in her iddut; and even with respect to a femme coverte, her acknowledgment is valid, if credited by her husband, or confirmed by the testimony of the midwife; for all that is necessary is evidence of the actual birth, to which the testimony of one woman is sufficient§, the ascription of the child to the husband being an inference of law from the fact of marriage, as already observed, which can be rebutted only by the lian or imprecation. Where a woman has no known husband, there ceases to be any reason against the validity of her acknowledgment of a child, and it is accordingly held to be sufficient to establish its descent from herself||. In most of the authorities, a woman’s acknowledgment is stated to be valid with respect to both her parents;

‡ Inayah, Appendix, No. 103. Jowhurrut-oon-Nuyyerah, Appendix, No. 104.
§ Appendix, No. 103 and 104.
|| Jowhurrut-oon-Nuyyerah, Appendix, No. 104.
but the author of the Jowthurrah justly observes, that it ought to be restricted to her father; for if it were valid with respect to her mother, the mother’s assent being all that is farther necessary to complete the evidence, a woman’s acknowledgment would thus in all cases be good for establishing the descent of a female child from herself; which it is not, when she is vestita viro, or in her iddat, according to the concurrence of all authorities*.

The assent of the person acknowledged, which is necessary to the proof of kindred by acknowledgment, may in a case of descent be interposed after the death of the acknowledger, because descent is not rendered void by death. So also where the acknowledgment is made with respect to a wife, because one at least of the rights or consequences of the marriage remains after her husband’s death, that is the iddat†. Where the person acknowledged is the husband, his assent cannot be received after his wife’s death, according to Aboo Huntefa, the marriage and all its rights or consequences being at an end. But Aboo Yoosuf and Moomkumud maintained the validity of the acknowledgment in this case also, on the ground that inheritance, which is one of its rights, remains‡.

We have hitherto been speaking of express acknowledgment, but there is one case of what may Implied acknowledgment.

* Jowthurut-oon-Nuuyerah, Appendix, No. 104.
† Inayah, Appendix, No. 105.
‡ Jowthurut-oon-Nuuyerah, Appendix, No. 106.
be called implied acknowledgment, which deserves some consideration from the frequency of its occurrence. I mean the case of a man and woman living together and having children, where there is no evidence of actual acknowledgment on the part of the man, though his whole conduct may indicate nevertheless that he always looked upon the children as his own. If it can be shewn, that the woman is one with whom a Moohumudan cannot lawfully have intercourse, (as an idolatress, for instance,) the most express acknowledgment by the man would not be sufficient to establish their descent from him, as already noticed. So also, if it could be proved, that the woman was the wife of another during the time of the intercourse of which the children were the fruit, the intercourse would in like manner be zina, and express acknowledgment insufficient. But the proof of the latter issue is less easy than might at first strike the English reader, for the woman, though once married, might have been divorced, and it may frequently be difficult to prove that there was an actually subsisting marriage with another person at the time of the children’s conception. Much less can it be proved, that the intercourse was unlawful, where the woman may legally be the wife of the person from whom it is desired to establish the descent of her children; that is, one of the same religion, and who is neither related to him within the forbidden degrees, nor the wife of another; the man himself, too, having no more than his legal complement of wives. Let us
suppose that in such circumstances, where there is a mere absence of any evidence of marriage, and on the other hand, no proof of the illegality of the intercourse, that the man expressly acknowledges the children to be his. The legal effect of the acknowledgment is not limited to the establishment of their descent, or to the obligation of continuing to maintain them as his children; (both which consequences may probably be in his contemplation, as the acknowledgment implies a conviction in his own mind that the children are actually, if not legally, his own;) but it also exposes him to the severe penalty attached to fornication, amounting in some cases to capital punishment, if it should subsequently transpire, that the woman was not in fact related to him in such a manner as legalized his intercourse with her. No such consequence could attach to the tacit acknowledgment implied in his conduct. Nothing short of the evidence of four male witnesses, or the positive confession of the accused, can establish the fact of fornication*; and whatever suspicion may be excited, by a person bringing up as his own the children of a woman who is not his wife nor his slave, that he is conscious of having had criminal intercourse with their mother, yet there is nothing in that, even coupled with the fact of his notoriously living with her, that the law can properly lay hold of as a proof of his guilt. An express acknowledgment is thus

viewed only in the light of evidence, entitled to a weight which cannot be allowed to one that is only implied. And I am not aware of any authority that supports the proposition, that the want of an express acknowledgment of descent can be supplied by inferences drawn from the conduct of the party. Indeed it is quite undisputed, that where the woman is the slave of the man, and not his oom-i-wulud, nothing short of a direct claim or acknowledgment of the children can establish their descent from him. And it is only when the slave has previously borne him a child, that even his acquiescence for a long time in the ascription of her subsequent children to him, can preclude him from afterwards disclaiming them. It would seem to follow a fortiori, that a positive claim or acknowledgment is necessary where the woman cannot be shown to have been related to him in any way that would render their intercourse lawful.

It seems fair that the most liberal construction should be put on the admission of a fact, so as to avoid if possible the imputation of a collateral crime, which it is not the intention of the party to confess. Thus, where a man acknowledges a child produced by his wife within six months after his marriage, though there is strong reason to suspect that it must have been begotten in fornication, yet the descent is established, unless the acknowledge expressly admit it to be the fruit of unlawful intercourse*. It is, however, carrying the indulgence

See ante, page 37.
too far to reject the distinct testimony of a third party, because its tendency, if true, would be to impute a crime. Least of all, can there be any necessity for doing so, when the crime is of such a description that the law has required the evidence of several persons to establish it, and the testimony of one, however positive, can infer only a suspicion of its having been committed. Yet this appears to have been done by one of the Law Officers of the Sudder Dewany Adawlut, in the important case cited by Mr. Macnaghten at page 299 of his Principles and Precedents of Moohummudan Law; where the descent of children was held to be sufficiently established from a man, though there was no evidence of acknowledgment upon his part, and some of the witnesses positively declared that he was not married to their mothers. The latter fact being rejected by the Kazee-ool-Koozzat for the reason mentioned, the way was cleared for a constructive marriage between the mothers and the putative father of the children, and the latter were accordingly declared to be his heirs. But the Court is said to have gone further than the particular case, and to have decided, among other things, the general point, "that a marriage may be proved by something short of ocular proof, such as continual cohabitation, notoriety, hear-say, or circumstantial evidence*. It would be

* Principles and Precedents of Moohummudan law.—Note to page 302.
too great a digression to enter into a full examination of all the particulars which are here mentioned, and I shall confine myself to a few observations on the value of continual cohabitation, considered as an evidence of marriage, which is of too much importance to be entirely omitted.

It may be observed in general, with respect to the proof of marriage, that the Moohummudan law has made ample provision for the preservation of direct evidence respecting it. Where the parties are Moosulmans, it is necessary that the ceremony be performed in the presence of two male, or one male and two female witnesses, who are free, sane, adult and Moosulmans*. And the presence of these is required, as a condition essential to the constitution of the contract†. It would seem, however, that the object was publicity or something more than evidence, for the character of the witnesses, which is so carefully investigated in other cases, is here of no account; the presence of a person who has undergone the specific punishment for slander, and whose evidence is not generally admissible, being expressly declared to be sufficient‡.

† Budaye and Buhr-oor-Raik, as cited in the Futawa Alum-geeree, Appendix, No. 109.
‡ Buhr-oor-Raik, as above, Appendix, No. 10.
Now there is nothing in the fact of cohabitation, from which it can be inferred, that a contract of this special description has been entered into. If we imply that the intercourse of persons cohabiting together is legal, it is surely all that can be required in the most liberal indulgence for their situation. But it is not necessary for this purpose that we should suppose them to be married. If the woman be the slave of the man, their intercourse will be just as lawful as if she were his wife; and it is at least fully as probable that they should have been living together in a relation, which may be constituted by sale or gift, or any other of the numerous ways that property is acquired, as that they should have entered into a contract requiring formalities which almost ensure its publicity; and yet that not a trace of that contract should remain in the recollection of any person who can be produced as a witness*. It is true, that in this country, where there are so few legal slaves, the probabilities are less that the parties are in the predicament of master and slave. But it must be remembered, that we are considering the effect of cohabitation under the Moohumudan law, which was not made for this country, but for a state of society where legal slavery was common. It is farther to be observed, that the value of cohabitation, as an inference of

* The reader will keep in view, that if the woman were the slave of the man, the marriage would be illegal, and express acknowledgment by him of her child unquestionably necessary to the establishment of the paternity.
marriage, depends on the moral feelings of the community, and there is no reason to doubt, that though the number of legal slaves in the British dominions in India must be very small in the strict sense of the Moohummudan law, yet that there are persons who in the common parlance of the country are called slaves, and that the intercourse of these with their masters is just as lawful in the estimation of all good Moohummudans, with the exception perhaps of such as are versed in their law, as if they were slaves in the most rigid sense. In the case under discussion, the mothers of the children, whose descent was held to be established, were declared by the witnesses to be slaves of this description to their putative father.

The above reasoning, it must be admitted, is at variance with the opinion expressed by the Kazeeool-Koozzat, and the decision of the court, which was in accordance with it; and it becomes necessary to examine the authorities adduced by the learned Kazee in support of his opinion. The first of these, from the Khoolasut-ool-Mooftieen, is to the following effect: "Generally speaking, hearsay evidence is not admissible, except in four cases. Regarding death, or descent, or marriage, or with respect to a Kazee. To instance this in a case of descent: when a person hears from others, that such a one is the son of such a one, it is competent to him to give his evidence to that effect, although he may not have witnessed the birth in that person's family; in the same manner as we at
this day testify, that Aboo Bucr (on whom be the mercy of God) was the son of Quhafa, although we never saw Quhafa. To instance marriage: when a man sees another living in a state of cohabitation with a woman, and it is rumoured that she is his wife, it is competent to him to give evidence, that the woman is the wife of that person, although he may not have been present when the marriage was contracted. And when persons give evidence under such circumstances, declaring, that they are not eye-witnesses to the fact, but that it is notorious, their testimony will we received as valid*.” Upon this quotation, so far as relates to marriage, I have to observe, that the fact of cohabitation is coupled with a rumour (in itself no slight degree of evidence), that the parties are married, and that it is merely stated to be competent to the person who has this double ground of conviction, to bear testimony to the fact. While it is only when the rumour has risen to notoriety (in some cases a very high species of evidence), that testimony will be received to the fact of marriage, when the persons giving it admit that they were not eye-witnesses. So that it would appear, that whenever the defective grounds of belief are exposed to the judge, and the testimony is found to rest on no better foundation than the cohabitation of the parties, and a rumour of their marriage, it will be rejected as insufficient to establish the fact. That this is the true meaning

* Principles and Precedents of Moohummudan Law, p. 301.
of the passage is obvious from the parallel passage of the Jowhurrut-oon-Nuyyerah cited below*, where it is distinctly stated, that, in the four cases in which it is lawful for a person to bear testimony to a fact which he has not seen, he must have received the information from two male, or one male and two female, credible witnesses; the information must have been communicated to him in the formal words of testimony: he must believe it in his heart to be true; and finally, that he must not explain the grounds on which his testimony rests; for if he does explain it, as for instance if he say, "I bear witness from hearsay," it is incumbent on the Kazee to reject his testimony. This is confirmed by the only other authority quoted by the Kazee-ool-Koozzat from the Hidayat, though he has not given the passage at length. Thus, "it is not allowable for witnesses to depose to any thing which they have not seen, except in cases of descent, marriage, death, jurisdiction of a Kazee, and sexual intercourse. It is competent to a person to depose to a fact which may have been communicated to him by another in whom he has confidence. This proceeds upon a favorable construction." The Kazee's quotation then proceeds: "Thus, for instance, a person sees a man and woman living in the same house, and cohabiting with each other after the manner of husband and wife. In such case he may depose to the marriage†." But the quotations are widely apart in the

* Appendix, No. 111.
† Principles and Precedents of Moohummudan Law, p. 301.
original, being separated by what in the translation is a whole quarto page, and partly by a passage which contains the very distinction that I have alluded to. This passage, including the reference to cohabitation, is as follows: "When a person, in any of the above cases, gives evidence from creditable hearsay, it is requisite that he give it in an absolute manner, by saying, for instance, 'I bear testimony that A is the son of B,' and not, 'I bear testimony so and so, because I have heard it,' for in that case the Kazee cannot accept it; in the same manner as if a person, having seen a thing in the hands of A, were to say, 'This thing is the property of A,' in which case his testimony is valid: but if he should state that 'he gives evidence because he has seen the thing in the possession of A,' the Kazee could not accept his testimony. So also, if a person see another sitting in the court of justice, deciding in a suit between plaintiff and defendant, it is lawful for him to give evidence that 'that person was a Kazee;' or if a person see a man and woman dwelling in the same house, and conducting themselves towards one another in the manner of husband and wife, he may lawfully give evidence of their being husband and wife; in the same manner as it is lawful for a person who sees a melon in the hand of another, to give evidence that it is the property of 'that person.'" The distinction between the statement of a witness and the grounds of his belief.

does not exist in our law, where the latter are always the subject of careful investigation. But whether it be that the Moohummudan lawyers, as they are more careful about the character of the persons admitted to give testimony, so they place greater reliance on human testimony when given, and are less in the habit of cross examining witnesses, there is no question that the distinction exists in the Moohummudan law. That the practice of cross-examination is not entirely unknown, appears from the comment of the Inayah on the passage just quoted from the Hidayah. The author puts the case, that the Kazee should interrogate the witness who speaks to the marriage of persons whom he sees cohabiting together as man and wife, if he was present at the marriage. If he should answer in the negative, he may still have heard it in such a manner as to justify him in foro conscientiae in positively asserting the fact, and his evidence is not rejected, because the assertion, until it is actually discovered to rest on the defective ground of hearsay, is entitled to be received. But if the inquiry is pushed farther, and it is found that the foundation of the belief is in reality no better than hearsay, it is at once rejected. Here it is obvious, that the fact of cohabitation, separated from the rumour of marriage, is not taken into account at all, as forming any ground from which a rational inference can be drawn.

* Inayah, Appendix, No. 113.
† There is something so defective in hearsay, as a channel of
If what has been above offered be considered sufficient to explain away the two passages cited by the Kazee-ool-Koozzat, in support of his opinion in favor of cohabitation, then there has nothing communication, that its admission into the Moohummudan law is not calculated to raise that system in the estimation of the English lawyer. The term hearsay, however, conveys a very imperfect idea of the Arabic word istimau, of which it is nevertheless a literal translation. Testimony is of two kinds: direct, when given by the actual witnesses of a transaction; and indirect, when transmitted by persons who have heard the declarations of the actual witnesses. The last is entirely rejected by the Moohummudan law in cases that “drop in consequence of a doubt,” (Har-tton’s Hidayah, vol. ii. p. 709;) as where a person is accused of a crime which induces retaliation or a specific punishment. It is also rejected in all other cases, unless the original witness be dead, absent at a distance, or sick, (ibid. p. 712.) And when received at all, it is guarded with every precaution which can secure its accuracy. Thus, the original witness must have given his testimony to the secondary in the “same manner that he would have done in the assembly of the Kazee,” (ibid. p. 711;) that is with the solemn words “I bear witness,” which carry a peculiar sacredness, and are all that the law requires from the primary himself. 2nd. He must have expressly called on the secondary to receive his testimony, (ibid. 710.) And 3rd, there must be two secondary witnesses to the testimony of each primary, (ibid. p. 710.) In the four cases mentioned in the text this strictness is so far relaxed, that the positive call of the primary witness on the secondary to receive his testimony is not required. But then the hearsay ceases to be a legal channel of communication to the mind of the judge, and is sufficient only to the justification of a witness in foro conscientiae, and his protection from the punishment due to false testimony, if he should take upon him positively to assert the fact which has been communicated to him.
been adduced to impair the general effect of the reasoning by which I have attempted to shew that it is not a fact from which a Moohummudan marriage can be fairly inferred. The passage quoted from the *Hidaya* is indeed a direct authority the other way, going the full length of declaring cohabitation to be insufficient; for the author says expressly, with respect to the possession of a thing, that seeing it in the hand of a person is no evidence of right of property, though perhaps enough to justify a witness in making the assertion; and of cohabitation he says, that it is lawful for the person who has seen it to bear testimony to the marriage of the parties, only, "in the same manner as it is lawful for a person who sees a melon in the hand of another, to give evidence that it is the property of that person."

Under the English and Scotch laws it is necessary, that the person who claims to be an heir should prove the legitimacy of his birth. When this is required in the Moohummudan law, it is only for the purpose of establishing descent. And in all cases whenever a claimant has established his descent, he becomes entitled to such portion of the inheritance as the law has appropriated for his degree of kindred to the deceased.
CHAPTER IV.

Of Shares and Sharers.

The shares mentioned in the Kooran are six in number; viz. a half, a fourth, an eighth, two-thirds, one-third, and a sixth. And there are twelve classes of persons for whom they are appointed; of which four are male, namely, the father, true grand-father, half-brother by the same mother, and husband; and the remaining eight are female, viz. the wife, the daughter, daughter of a son how low soever, that is, of any male descendant connected with the deceased entirely through males, sister of the full blood, or by the same father only, or the same mother only, the mother and true grand-mother. The persons above enumerated do not all succeed simultaneously, nor are their shares constantly the same. On the contrary, some of them are in the most ordinary cases entirely excluded, and the shares of the others, though they are always entitled to some participation in the inheritance, are liable in certain circumstances to reduction. The latter class

* For an explanation of this and the term true grand-mother, see post pp. 63 and 65.

† Sirajiyyah, Appendix, No. 114.
includes the husband and wife, father, mother, and daughter; and the former includes the true grand-father and true grand-mother, the daughter of a son how low soever, the full sister, and the half-sister whether by father or mother, and the half-brother by the same mother. The exclusion of these persons is founded upon and regulated by two general principles, applicable alike to sharers and residuaries. The one is, that a person who is related to the deceased through another, has no interest in the succession during the life of that other; with the exception of half brothers or sisters by the mother, who are not excluded by her. And the other principle is, that the nearer relative to the deceased excludes the more remote*. Thus, a grand-father is excluded by a father upon both principles, being more remote, and also connected through him with the deceased; and a grand-son is excluded by a son upon both principles, when that son is his father, and upon the second principle, when he is his paternal uncle.

Having premised these few general observations, the reader will be able to follow without difficulty the details of the different shares as they are presented to his notice. But here it is proper to remark, that some of the persons above-mentioned are occasionally residuaries, as well as sharers, and will appear in the former character in the next chapter. I ought, perhaps, in strictness to confine myself in this place to a consideration of their claims as sharers; but it

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* Sirajiyyah and Shurcefeea, Appendix, No. 115.
may be convenient to the reader to have all their rights in the inheritance placed before him in one view; and I will therefore notice, as I proceed, the residuary rights of such of the sharers as may become residuaries, following in this respect the example of the author of the *Sirajiyyah*, though perhaps at the expence of some repetition. It is of little consequence in what order we consider them, and I shall take them according to their propinquity to the deceased, beginning with the husband.

The share of a husband is one half; but it is reduced to a fourth when there is a child or child of a son how low soever*, that is, any male descendant connected with the deceased entirely by males. And to one or other of these shares the husband is always entitled, being one of the persons who are never entirely excluded, as already noticed.

The share of a wife is precisely the half of a husband's in similar circumstances; being an eighth when there is a child or child of a son, how low soever, and a fourth when there is none. Though a man may have as many as four wives, the provision for two or more is the same as that for one; the fourth or eighth, as the case may be, being divisible among them equally†.

A daughter's share, where there is only one, and no son, is a half of the property; and the share of

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* Sirajiyyah, Appendix, No. 116.
† Sirajiyyah, Appendix, No. 117.
two or more daughters in the same predicament is
two-thirds, which are of course divisible among
them equally. When there is a son, they lose
their character of sharers and become residua-
ries with him*, by reason of a principle laid down
in the Kooran, which requires that the portion of a
son shall be double that of a daughter. A compli-
ance with this rule would be plainly impossible, if
the daughters were to retain their shares, and the ex-
pedient has been adopted of merging the shares in the
residue. In this case, the sons are said to render their
sisters residuaries, and the proportion of the inheri-
tance to which they are entitled must depend upon
the amount of the residue, which will of course vary
according to the number of the other sharers who
may be in existence. Whatever the residue may
be, it is to be divided in the proportion of two shares
to each male, and one share to each of the females†.

When the deceased has left neither son nor daugh-
ter, nor son’s son, the share of the inheritance ap-
propriated to daughters passes to the daughters of
the son, who then come into the place of daughters
in every respect; the share of one being a half, and
of two or more two-thirds, as above-mentioned‡.

When there happen to be in the same degree with
the daughters of the sons, one or more males who

* Sirajiyyah, Appendix, No. 118.
† Shureefceea, Appendix, No. 119.
‡ Sirajiyyah, Appendix, No. 120.
are residuaries; as their own brother, or the son of their paternal uncle; the shares of the son's daughters are merged in the residue by reason of the principle already mentioned, and they are said to be rendered residuaries, in the same way as the daughters of the deceased are made residuaries by the existence of a son.

As the shares of daughters sink into the residue when there is a son, there can be nothing to pass to the series of heirs beyond them, and the sons' daughters are therefore always excluded by the existence of a son. They are likewise excluded as sharers when the deceased has left two or more daughters though no son, because the whole of the two-thirds appropriated to daughters is then exhausted by themselves. But where there is only one daughter and no son, the complement of the two-thirds after deducting her moiety, being one-sixth of the estate, passes to the daughters of the son.

Though sons' daughters are entirely excluded as sharers, when there are two or more daughters, they are nevertheless in some instances admitted to a trifling participation in the inheritance by the operation of the rule already noticed. This happens when there is a male or males in the same or a lower degree entitled to the residue. Suppose, that the

* Shureefeea, Appendix, No. 121.
† Sirajiyyah, Appendix, No. 122.
‡ Ibid. Appendix, No. 123.
§ Appendix, No. 122.
deceased has left no son, but two or more daughters, and grand-children both male and female by a son. Here two-thirds being set apart for the daughters, there is nothing to pass to the sons' daughters as sharers; but if there be no other legal sharers, the remaining third is divided, as residue, between the grand-children, in the ratio of two parts to a male, and one to a female. In strictness, the operation of this rule ought to be confined to the case where the residuary is in the same degree with the daughters of the son. But it has seemed hard, that they should be deprived by a more remote relative, of an advantage which they enjoy with one who is nearer, and the rule has been extended accordingly*. The extension however is limited to cases where the more enlarged construction is beneficial to them; for whenever they happen to be legal sharers, it is only by a male of the same degree, that they can be made residuaries†.

It seems unnecessary to follow the line of female descendants farther, as the reader, if I have succeeded in rendering the principles which regulate the succession of the sons' daughters intelligible to him, will have no difficulty in applying the same principles to the daughters of the grandson, and so on.

Of ascendants, the first in degree, as in importance, is the father of the deceased, whose legal share is a sixth; but it will be seen hereafter, that he may be a residuary also. So that there are three states of

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* Shu'eefeea, Appendix, No. 124.
† Sirajiyah and Shu'eefeea, Appendix, No. 125.
conditions appropriate to a father. He is simply a sharer, being entitled to a sixth of the estate, as above-mentioned, when the deceased has left a son, or son's son how low soever. When there are only daughters, or son's daughters, he is both a sharer and residuary; and simply a residuary where there is no child, nor child of a son how low soever.*

The true grand-father is defined to be a male ancestor, into whose line of relationship to the deceased a female does not enter†; and the first true grand-father is of course the father's father. He is entirely excluded by the father ‡; but if the father be dead, comes into his place; and his interest in the inheritance is the same, with this difference, that being more remote, he is liable to be differently affected by the rights of the mother and grand-mother. Thus a paternal grand-mother, who is entirely excluded by the father, is capable of inheriting with the true grand-father; and a mother who, when there is a father and a husband or wife, gets no more than a third of the remainder, after deducting the share of the husband or wife, is entitled to one-third of the whole, when there is a grand-father instead of the father.§

The share of a mother is a sixth when there is a child living, or the child of a son how low soever, or two or more of the brothers and sisters;

* Sirajiyyah, Appendix, No. 126.
† Ibid. No. 127.
‡ Ibid. No. 128.
§ Sirajiyyah and Shureefeea, Appendix, No. 129.
whether of the whole or half blood. And in all other cases, with only two exceptions, her share is a third. The exceptions are when the deceased has left a husband, or wife, and both parents. In these circumstances, the husband being entitled to a half, and the wife to a fourth, if the mother received a third, there would remain no more than a sixth for the father in the one case, and five-twelfths in the other, while the law generally requires that the share of a male shall be double that of a female when they succeed together. To avoid this inconsistency, the share of the mother is reduced to one-third of the remainder, after deducting the portion of the husband or wife; by which means the proper ratio is preserved between the shares of the father and mother; for the former, being in this case the residuary, will take the remaining two-thirds, or exactly double the portion of the latter.

It has been observed, that the mother’s share, when there are two or more brothers and sisters, is a sixth. It will be seen hereafter, that brothers and sisters are entirely excluded by the existence of the father; yet it may be asked, if the other sixth, which they are thus the means of cutting off from the mother, shall not belong to themselves, or if it must devolve on the father? This question has given occasion for much discussion, and a variety of opinions among the learned; but the sect of Aboo Huneefa have determined in favor

Sirajiyyah, Appendix, No. 130.
of the father, assigning the following text of the 
Kooran as the ground of their decision; “but if he 
have no child, and his parents be his heirs, then his 
mother shall have the third part; and if he have 
brethren, his mother shall have a sixth part.”
Here it is contended, that as the father is undoubt-
edly entitled under the first clause of the sentence to 
the remainder, after deducting the mother’s third, 
so the latter part of the sentence ought to be taken 
as if it had stood thus: “and if he have brethren, 
and his parents be his heirs, his mother shall have a 
sixth part, and his father the remainder†.

The true grand-mother is any lineal female ances-
tor in whose line of relationship to the deceased a 
false grand-father does not enter‡; and a false grand-
father is a lineal male ancestor between whom and 
the deceased a female is interposed. Thus in the 
first degree, the mothers of both parents are neces-
sarily true grand-mothers; and in the second degree, 
there are three true grand-mothers, viz. the father’s 
grand-mothers on both sides, and the mother’s mater-
nal grand-mother, her paternal grand-father being 
excluded by the interposition of her father, who is 
obviously a false grand-father.

. The share of a true grand-mother is a sixth; which, 
if there be more than one of them in the same degree, 
is divided between them equally.§

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* Sale's Kooran, (Edition 1801) page 94.
† Shureefee, Appendix, No. 131.
‡ Appendix, No. 114.
§ Sirajiyygh, Appendix, No. 132.
True grand-mothers of any description are excluded by the existence of the mother; those on her own side for two reasons; first, because they are connected with the deceased through her, and second, because they have but one common cause of succession, namely, maternity. She excludes the paternal grand-mothers for the latter reason only. These are also excluded by the existence of the father, or the paternal grand-father; but the maternal grand-mothers are not excluded by them*

Amongst grand-mothers the more remote are excluded by the nearer, even though she should be incapable of taking any part of the inheritance. Thus the paternal grandmother is excluded by the father, but she is nevertheless capable of excluding the mother of the mother's mother, though the latter would not, as already noticed, be excluded by the father himself†.

In the higher stages of ascent, an ancestor is occasionally connected in two ways with the deceased. Thus, suppose that the deceased has left two great-grandmothers, one the mother of his father's mother, and the other the mother of his mother's mother, and that the latter is also the mother of his father's father; thus making his paternal grand-father and maternal grand-mother brother and sister‡. The three relationships above-mentioned are each a ground of inheri-

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* Sirajiyyah and Shureefea, Appendix, No. 133.—N. B. The words مُسِ النَّدَم have been omitted at the end of the extract.
† Sirajiyyah and Shureefea, Appendix, No. 134.
‡ Sirajiyyah, Appendix, No. 135.
tance in itself, and two of them being united in the per-
son of one of the great-grand-mothers, Moommmud
considered that she was entitled to two-thirds of the
sixth; the remainder being the portion of the other;
but, according to Aboo Yoosuf, the sixth is, notwith-
standing the double relationship of one, to be equally
divided between both*. We are informed by the
Imam Surukhsee that there is no authentic report of
Aboo Huneefa's opinion upon this point; but it is
mentioned in the book of inheritance of Husn, the
son of Abd-oor-Ruhman, the son of Abd-oor-Ruzzaq,
Ash-shashee, a follower of Shafei, that Aboo Huneefa
and Malik, as well as his own master, were of the
same opinion as Aboo Yoosuf$. 

There are five conditions in which full sisters may
be found. Three of these occur, when there are
neither children nor children of a son how low
soever; one full sister being entitled to a half of the
property in that predicament, and two or more of
them to two-thirds; while they lose their character of
sharers when there are full brothers, whose existence
renders them residuaries‡, the portion of each female
then becoming half the portion of a male.

In all the preceding cases, however, the share of the
sisters is liable to be intercepted by a father, or true
grand-father; by whom they are absolutely excluded,
as well as by a son or son's son how low soever§.

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* Sirajiyyah, Appendix, No. 136.  
‡ Shureefeea, Appendix, No. 137.  
‡ Sirajiyyah, Appendix, No. 138.  
§ Ibid, No. 139.
When there are two or more daughters, or daughters of a son how low soever, there can be nothing to pass to the deceased's sisters, though there be neither son nor son's son, father or true grand-father to exclude them. In this case, it seems hard that they should be denied all participation in the inheritance, to give place to a residuary less closely connected with the deceased than themselves. The prophet himself has anticipated and obviated this hardship, by directing that sisters in the case supposed, shall be residuaries with daughters, or the daughters of a son*; and their portion will be either one-half or a third, as there is one or more of these in existence. It is not to be supposed, however, that the full sisters can supersede the husband or wife, mother or true grand-mother. These being legal sharers must be satisfied before any thing can pass to a residuary, and as the sisters are rendered merely residuaries in the case in question, they can have no better right than the legal residuary in the same circumstances.

Half-sisters by the father come into the place of full sisters, when there are none; that is, the share of one is a half and of two or more two-thirds†; while with daughters or son's daughters, they become residuaries‡. With one full sister, whenever she is entitled to a half, they take the complement of two-thirds, or one sixth; and by two or more full sisters

* Sirajiyyah, Appendix, No. 140.
† Sirajiyyah, Appendix, No. 141.
‡ Ibid, Appendix, No. 142.
they are entirely excluded, unless there happens to be a half-brother by the father who makes them residuaries, when they become entitled to participate in the residue in the ratio of two parts to a male, and one to a female.

Half-brothers and sisters by the same mother, are entirely excluded from the inheritance by the existence of a child, or the child of a son how low soever, or of a father or true grand-father; and in all other cases, the legal share of one is a sixth, and of two or more one-third. There is no distinction in this case in favor of the stronger sex, both males and females having the same right and succeeding equally. The learned author of the Principles and Precedents of Moohummudan law observes, however, that "the general rule of a double share to the male applies to their issue." The issue of half-brothers and sisters by the same mother are nowhere mentioned as sharers in their own right; and the learned author has himself observed, that the right of representation has no place in the Moohummudan Code. It will be found in the following chapter, that the proper residuaries are all connected with the deceased through males; a condition which obviously excludes the children of half-brothers or sisters by the mother.

* Sirajiyyah, Appendix, No. 141.
† Sirajiyyah, Appendix, No. 143.
‡ Page 5, § 30.
The only other description of heirs in which it seems possible to include them, is that of distant kindred, and in that character, they may occasionally be found entitled to a participation in the inheritance; but according to the better and more general opinion, their succession as distant kindred is regulated in the same way, as that of their parents, without any distinction on account of sex.

See chapter of Distant Kindred.
CHAPTER V.

Of Residuaries.

In most of the cases mentioned in the last chapter, there is a residue after the portions of the legal sharers have been separated from the estate. This residue passes to a class of persons, who from that circumstance have been termed residuaries by Sir William Jones, in his translation of the Sirajiyyah, and the name has been adopted by Mr. Macnaghten in his Principles and Precedents of Moohummudan law. There is some reason to suppose, as already observed in the first chapter, that the persons who are now generally classed as mere residuaries, were originally the sole heirs of an intestate person. The term by which they are designated in the Arabic language, was first rendered "heirs," by Sir William Jones, in his translation of the Biyatol bahith, though he afterwards substituted for it the word "residuaries," in the translation of the Sirajiyyah. A name is not perhaps of much importance; but if I had felt myself at liberty to depart from two such high authorities, I might have ventured to suggest the term "agnate" of the civil law, as
approaching nearer to the definition of the Moohum-
mudan Code*.

Residuaries have been divided by the author of
the Sirajiyyah into three different classes; residua-
ries in their own right; residuaries in the right of
another; and residuaries with another†.

With the two last classes the reader has been made
acquainted in the preceding chapter; the residuaries
in right of another being daughters, son’s daughters,
full sisters, and half-sisters by the father; all of
whom lose their character of sharers and become resi-
duaries, when there exist one or more males in the
same or a lower degree; and residuaries with an-
other being sisters with two or more daughters or
daughters of a son how low soever; in which case the
former are entirely excluded from the inheritance as
sharers, but admitted to participate in the character
of residuaries. Upon these two classes it is unneces-
sary for me to say more in this place, and I shall
confine myself to the consideration of those who are
residuaries in their own right.

The residuary in his own right is defined to be
"every male in whose line of relation to the deceas-
ed no female enters‡;" and such residuaries may be
divided into three classes; viz. descendants, ascen-
dants, and collaterals. By a metaphor not peculiar
to the Moohummudan law, the deceased is consider-

* See Note, page 14.
† Sirajiyyah, Appendix, No. 144.
‡ Ibid, Appendix, No. 145.
ed to be a tree, of which his descendants are the branches, and the ascendants the roots. Without straining the metaphor too far, we may be permitted to term the collaterals offsets. The branches or descendants come first in the order of succession, and they are the sons, then their sons how low soever; next follow the roots or ascendants, who are the father, then the true grand-father how high soever; and last succeed the offsets, or collaterals, who are first the sons of the father, that is, brothers; then their sons how low soever; and next the issue of the true grand-father, or paternal uncles, and their sons how low soever.

There is this marked difference between sharers and residuaries, that, while several distinct classes of the former are capable of succeeding together, the existence of the nearer residuary entirely excludes the more remote†. Thus, a son’s son can never participate in the inheritance with a son, nor the father with either as a residuary, though he is not excluded from his proper sixth as a sharer. When there are two persons equally near of kin to the deceased, but one related to him through both parents, and the other only through one, the master of two propinquities, as he is termed, is preferred‡.

The reader who has attentively perused the chapter on sharers, will have no difficulty in determin-

* Sirajiyyah, Appendix, No. 146.
† Ibid.
‡ Ibid, No.147.
ing the amount of the residue in every case that can occur. Yet to facilitate reference, I will take a short view of the residuaries in the order of their succession, noticing, though at the risk of some repetition, the sharers who are entitled to participate in each particular case.

When the residuary is a son, the only other persons who are entitled to participate in the inheritance are the parents (or their substitutes among the more remote ancestors), each of whom has a sixth, the husband whose share is a fourth, or the wife who is entitled to an eighth. Daughters, if the deceased has left any, are residuaries with the son or sons, the share of each male being double that of a female.

In default of a son, the son's son is the residuary; and in that case, all the sharers mentioned in the last paragraph are entitled to participate, with the addition of the daughters; the son's daughters becoming residuaries with their brothers or cousins, and taking according to the usual rule of distribution among males and females. In the subsequent stages of descent there is the same difference; the females of the higher grade being sharers when the two-thirds appropriated to daughters are not exhausted, and in other cases participating in the residue according to the general rule.

When the father is the residuary, the daughters, and their substitutes the daughters of a son how low soever, are sharers to the extent of two-thirds, the
husband is entitled to a half, the wife or wives to one-fourth, and the mother or her substitutes among the grand-mothers to a sixth, though the portion of the mother is liable to some variation in this case as already noticed.

In default of the father, the paternal grand-father is the residuary, and the sharers are the same as in the last case, with a slight difference in the rights of the mother, which has been adverted to under the head of her share. The same observation is applicable to the more remote ancestors, whose condition is in all respects the same as that of the first grand-father, except in so far as it may be affected by the claims of intermediate grandmothers.

When there is neither in the descending nor the ascending line a male who is connected with the deceased through males, the residue passes to the children of the father, or brothers, among whom the master of two propinquities, or full brother, is preferred, as already noticed, to the brother by the father alone.

When a full brother is the residuary, the sharers are the same as with a residuary grand-father, with the addition of half-brothers and sisters by the mother only, who are now first entitled to a share, which, as formerly noticed, is a sixth for one and a third for two or more. The full sisters are residuaries with their brother or brothers, and share according to the general rule of distribution among males and females.
When a half-brother by the father is the residuary, the sharers are the same as in the last case, with the addition of full sisters, who are not made residuaries by half-brothers, and retain their own character of sharers.

With the sons of the full brother for residuaries, there is the further addition of half-sisters by the father only as sharers; and so with the sons of the half-brother by the father, and all subsequent descendants of the father, the females of the preceding grade being sharers when the two-thirds appropriated to daughters are not exhausted, and in other cases dividing the residue according to the general rule of distribution among males and females.

After we have passed the descendants of the father, all the sharers except the husband and wife disappear, and the first residuary among the descendants of the grand-father, that is the paternal uncle, is liable to be reduced by all the sharers in existence, none of whom are excluded by him. Among uncles, as among brothers, the master of two propinquities is preferred to the master of only one, and the paternal uncle, who is the full brother of the father, is accordingly called to the succession before him, who is connected with the father through one parent only*. The further descendants of the grand-father are called to the succession in the same manner as those of the father.

In the right line, whether of ascent or descent, it is universally agreed, that there is no limit to the per-

Sirajiyyah, Appendix, No. 148.
sons who may be called to the succession, provided that they are males, and connected with the deceased through males, according to the definition already given of the term residuary. I am disposed to think that, with this qualification, the succession of residiaries in the collateral line is equally unlimited. It must be admitted, however, that the learned author of the Principles and Precedents of Moohummudan Law seems to entertain a different opinion, and that his opinion appears to be supported by the translator of the Sirajiyyah. Whatever respect may be due to the sentiments of these two distinguished persons, it is hardly necessary to apprise the reader that they cannot be received as authority upon a point of this kind, except in so far as they are founded upon what has been delivered by the original writers, and to these I will presently beg to direct his attention.

The passage of the Principles and Precedents, in which the opinion that I have adverted to seems to be contained, is as follows: "When there is no son nor daughter, nor son's son, nor son's daughter however low in descent, nor father, nor grand-father, nor other lineal male ancestor, nor mother, nor mother's mother, nor father's mother, nor other lineal female ancestor, nor widow, nor husband, nor brother of the half or whole blood, nor sons how low soever of the brethren of the whole blood, or of those by the same father only, nor sister of the half or whole blood, nor paternal uncle, nor paternal uncle's son how low soever, (all of whom are termed either sharers or residuiaries,) the daughter's children and the children of the son's
daughters succeed; and they are termed the first class of distant kindred*.") The text of the Sirajiy-yah quoted by the author at the end of his book, and bearing the same number as the above passage, can have been intended only as an authority for the succession of the distant kindred; but it is here given entire, as translated by Sir William Jones, for the further satisfaction of the reader. "A distant kinsman is every relation, who is neither a sharer nor a residuary. The generality of the prophet's companions repeat a tradition concerning the inheritance of distant kinsmen, and according to this our masters and their followers (may God be merciful to them) have decided. The first class is descended from the deceased, and they are the daughter's children, and the children of the son's daughters†."

The only passage in the translation of the Sirajiy-yah, bearing directly on the point, that I am aware of, is the following, which does certainly seem to countenance the doctrine of the limitation of residuaries in the collateral line to the descendants of the grand-father, though it is at the same time obviously

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* Page 7, § 43.—There is an apparent inconsistency between this passage and the Preliminary Remarks, page xi, where the author observes, that "the residuaries by relation are the sons and their descendants, the father and his descendants, the paternal ancestor in any stage of ascent and his descendants." The words which I have underlined seem to comprehend the collaterals, however remote, from the deceased.

† Sir W. Jones's Works, vol. iii. p. 537.
inconsistent with the general definition of the term, with which the paragraph commences: "Now the residuary in his own right is every male in whose line of relation to the deceased no female enters; and of this sort there are four classes; the offspring of the deceased and his root, and the offspring of his father and of his nearest grand-father, a preference being given, I mean a preference in the right of inheritance, according to proximity of degree. The offspring of the deceased are his sons first; then their sons, in how low a degree soever; then comes his root, or his father, then his paternal grand-father, and their paternal grand-fathers; then the offspring of his father, or his brothers; then their sons, how low soever; and then the offspring of his grand-father or his uncles; then their sons how low soever." There is nothing in the preceding quotation which cannot be reconciled with the definition of "residuary" at its commencement, except the words "nearest grand-father;" and we have fortunately the means of shewing beyond dispute that these are an inadvertence of the translator. In the copy of the text annexed to the translation, the vowel marks are inserted, and if these be correct, it is obvious that the words "nearest" and "grand-father" cannot agree together: and they are so distinct from each other in the Calcutta edition, which contains both the text and the commentary printed together, that the commentator stops at the

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word "grand-father," to make an observation on the sentence that concludes with it, before he suffers the reader to proceed to the next, which begins with the word "nearest*. The passage, as it stands in the Calcutta edition, and stripped of the commentary, a part of which has slipped into the text of Sir William Jones's copy, and may have given rise to the mistake in question, is literally as follows: "and they are four classes: the offspring of the deceased and his root; and the offspring of his father, and the offspring of his grand-father. The nearest is nearest, I mean by this, that the first in the inheritance is the offspring of the deceased, or the sons; then their sons, how low soever; then his root, or the father; then the grand-father, or father's father, how high soever;" &c. The reader will observe, that the term grand-father is here taken in its proper comprehensive sense, to signify the lineal male ancestor however remote; and, but for the word nearest, the insertion of which I hope has been satisfactorily explained, there is nothing from which it can be gathered that the term was to be taken in a less comprehensive sense when the descendants of the grand-father are mentioned. It is true, that these are described a little lower down as uncles, but the word in the Arabic, which has been so translated, is one of equal comprehensiveness, being employed to designate not only the father's brothers, but the brother of any male ances-

* Shureefseea, Appendix, No. 149.
tor however remote, provided he be connected with the deceased through males.

It is to be observed, that if the enumeration of residuaries contained in the paragraph quoted from Mr. Macnaghten's work, be complete, all relatives beyond the descendants of the grand-father are excluded, though they should fall within the general definition of the Sirajiyyah. In the following extract from the Koodooree, a book of very high authority in 'Arabia, and generally supposed to be the principal source from which the author of the Hidayah obtained the text of the law on which his own work is a commentary, the enumeration of residuaries is carried one step farther, to the descendants of the great grand-father. "The nearest residuaries are the sons; then their sons; then the father; then the grand-father; then brothers; then their sons; then the sons of the grand-father, and they are paternal uncles; then the sons of the father of the grand-father, and they are paternal uncles of the father." And to the same effect is the following extract from the Futawa Sirajiyyah. It is rather long, but contains a distinct enumeration of the residuaries in the order of their succession, which is sufficient apology for laying it entire before the reader. "The nearest residuaries to the deceased in their own right are sons; then their sons; then the sons of their sons how low soever; then the father; then the grand-

* Sirajiyyah and Shureefeea, Appendix, No. 150.
† Appendix, No. 151.
father, or father's father how high soever; then the full brother; then the half-brother by the same father; then the sons of the full brother; then the sons of the half-brother by the same father; then their sons in this manner; then the father's full brother; then the father's half brother by the same father; then the sons of the father's full brother; then the sons of the father's half-brother by the same father; then their sons after this arrangement; *then the paternal grand-father's full brother; then the paternal grand-father's half brother by the same father; then their sons after this arrangement*."

In the extract cited below from the Futawa Alumgeereee, a work of perhaps the highest authority in India, as having been compiled under the orders of the Moghul Government in its brightest period, the enumeration of residuaries, after proceeding in nearly the same terms as those of the last quotation, is carried one step higher to the paternal uncles of the grand-father, that is to the descendants of the great great grand-father†. If these works are to be allowed any

* Futawa Sirajiyyah, Appendix, No. 152. In the case of Doe, on the demise of Sheikh Moohummud Bukhsh, v. Shurf-ouu-Nissa Begum and Tajun Beebee, tried in the Supreme Court in the sittings after the second term 1831, it was decided in conformity with the above authorities, which were brought to the notice of the Judges, and the futwa of Molvee Morad, head Moohummudan officer of the Court, that the plaintiff, who was descended from the great grand-father of the deceased, was entitled to a share of the residue:

† Futawa Alumgeereee, Appendix, No. 153.
weight at all, it is clearly impossible, that the limitation implied in the expression "descendants of the nearest grand-father," can be correct; and there is nothing else, even in Sir William Jones's translation of the passage previously quoted from the Sirajiyyah, to restrict the meaning of the definition of the term residuary, with which the paragraph commences, the comprehensiveness of which is worthy of the reader's particular attention. "Now, the residuary in his own right," says the author, "is every male in whose line of relation to the deceased no female enters*."

To an English lawyer it may seem of little importance to trace the destination of the residue beyond a series of persons whom he may consider to be inexhaustible. It must however occasionally happen, that the residuary does not appear, or is unable to make good his claim; and the general provision, which the Moohummudan law has made for the appropriation of the remainder of the estate in that event, forms the subject of the chapter on the return. In the special case of emancipated slaves, the surplus does not reverts to the sharers on failure of residuaries by descent, but passes to the emancipator, who is thus in consequence termed the last of the residuaries†.

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* In the Persian translation of the Sirajiyyah, which is probably referred to by the natives of this country, at least as often as the original Arabic, the important word every is omitted, though it occurs both in the copy of the original given by Sir William Jones, and in that printed at Calcutta with the Shureefea. The latter was, I presume, collated with other copies, and I am not aware that its accuracy has ever been called in question.

† Sirajiyyah, Appendix, No. 154.
If the emancipator be dead, his residuaries are called to the succession in the order already explained; his sons first, then his son's son how low soever, grandfather, and so on*. When there are legal sharers of the slave's estate and nothing but residue passes to the emancipator, it is hardly out of the ordinary course of the law that his residuaries should be substituted for him in the event of his death, instead of his general heirs. But when, as may sometimes happen, the emancipated slave has no known relatives of any kind, and the whole of his property falls to the emancipator, it appears hard that the legal sharers of the latter should be excluded from all participation. Yet the law is so. Females have been expressly excluded by the prophet himself†; and of legal sharers even the nearest of all, a father, is not allowed to participate with a son according to the concurring judgments of Aboo Huneefa and Mqohummud. The last opinion delivered by Aboo Yoosuf was in favor of the father, whom he considered to be entitled to a sixth. But even he agreed with the others in assigning nothing to the grand-father in such circumstances‡.

I should now perhaps proceed to consider the farther destination of the residue when there are no residuaries of any kind, or of the whole estate upon

* Sirajiyyah and Shureefee, Appendix, No. 155.
† Sirajiyyah, Appendix, No. 156.
‡ Ibid. and Shureefee, Appendix, No. 157.
the failure of sharers also. Cases of this description must necessarily be of rare occurrence; and it seems desirable to place at once before the reader the rules adopted by the Moohummudan lawyers for distributing an estate among sharers and residuaries. I shall, therefore, after the example of the author of the Sirajiyyah, first direct the reader's attention to the method of extracting shares, which forms the subject of the following chapter.
CHAPTER VI.

Of the Extractors of Shares.

It will be found, on reverting to the enumeration of shares at the commencement of the fourth chapter, that they may be all divided into two series, each consisting of three terms, of which the intermediate term is half that which precedes, and double of that which follows it. The first series comprehends the shares a half, a fourth, and an eighth, and the second the shares two-thirds, one-third, and one-sixth*.

Whatever the share may be, if there is only one, nothing more is required, in order to extract it from the general mass of the estate, than to divide the latter by the fraction which represents the share, and the quotient will be the amount required. In this case, therefore, the name of the share itself is said to be the extractor; thus two is the extractor for a half, three for a third, four for a fourth, and so on†.

When there are two or more shares, but they all fall within the same series, as a sixth and a third, a

* Sirajiyyah, Appendix, No. 158.
† Sirajiyyah, Appendix, No. 159.
half, a fourth, and an eighth, the name of any of the shares might serve the purpose of an extractor; yet there would be this inconvenience in assuming the greater share for the purpose, that the smaller must be expressed by a fraction. The rule, therefore, in all such cases is, that the name of the lowest share shall be taken for the extractor. Thus, when the shares are a third and a sixth, the extractor is six*, and when they are a half, a fourth, and an eighth, the extractor is eight; and the estate is divisible into six or eight portions accordingly.

If there are shares to be extracted which belong to different series, the extractor must be sufficiently large to admit of being divided by all the shares without a fraction, and it is the smallest number which is so divisible. Thus, when there is a half with one or more of the other series, the extractor is six†, which is the least number divisible by a half, a sixth, a third, and two-thirds, without a fraction. And when there is a fourth with one or more of the other series, the smallest number divisible without a fraction by a fourth, a sixth, a third, and two-thirds, is twelve, which is accordingly the extractor of the case‡. In like manner, when an eighth is found in conjunction with a sixth, a third, or two-thirds, the extractor is twenty-four§, which is the lowest.

* Sirajiyah, Appendix, No. 160.
† Ibid, Appendix, No. 161.
‡ Ibid, Appendix, No. 162.
§ Ibid, Appendix, No. 163.
number that can be divided by all these numbers without a fraction.

The estate is of course to be divided, in all the cases mentioned, into as many parcels as there are units in the extractor, and a corresponding number of these parcels set apart for each share. Thus, if a woman die, leaving a husband and two half-sisters by the mother, the share of the former under such circumstances is a half, and of the latter, a third; which presents the concurrence of a half with one of the second series; the estate is accordingly divisible into six parcels, whereof three belong to the husband, and two to the sisters, the remainder being the property of the residuary. In like manner, when there is a husband with two daughters, the share of the former being a fourth, and of the latter, two-thirds; the estate must be divided into twelve parts, three of which belong to the husband, eight to the daughters, and the surplus is residue. Or when a wife, two daughters, and a mother are left, the share of the first being an eighth, of the second, two-thirds, and of the last, a sixth; the estate is to be divided into twenty-four parcels, three of which are the property of the wife, sixteen of the daughters, four of the mother, and the single one remaining passes to the residuary*.

The preceding rules would be always sufficient for extracting the shares, if the estate were in all cases

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* The preceding illustrations are taken generally from the Shureseeca; but as they are only applications of rules, it is unnecessary to quote the authority at length.
ample enough to meet the claims of every person entitled to participate in it. But in some cases it is not so; and a method is required for reducing the shares ratably whenever there happens to be a deficiency. Nothing can be more simple and complete than the expedient adopted by the Moohummudan lawyers for this purpose; which consists in raising the extractor of the case, or in other words, the common denominator of the fractions in which the shares are expressed, while their enumerators remain unchanged. Thus, suppose the deceased to have left a husband and two full-sisters, the share of the former being in such circumstances a half, and of the latter, two-thirds, or when reduced to fractions of the same denomination, three-sixths and four-sixths, there is obviously one sixth more than the amount of the estate, and it is distributed over the shares by advancing the common denominator from six to seven, the number indicated by the addition of all the numerators. The husband's share becomes three-sevenths in consequence, and the share of the sisters four-sevenths. That the original ratio between the shares is preserved is obvious from the proportion $\frac{6}{7} \times \frac{1}{7} = \frac{6}{7} \times \frac{1}{7}$.

This is called the doctrine of the increase, because the extractor is increased in the manner described.

The extractors two, three, four, and eight, are never increased†; because in all the cases where they are

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* Sirajiyyah, Appendix, No. 164.
† Siraliyyah, Appendix, No. 168.
called into operation, the estate is either exactly commensurate with the claims upon it, or there is a surplus after the sharers have been satisfied. Thus, the only case where the extractor two can be required is, either where the estate is to be divided into two equal parts, as between a husband and a full-sister, or into a half and residue, as between a husband and a full-brother. In like manner, the only cases that require the extractor three are those which present a third and residue, as when the deceased has left a mother and a full-brother; two-thirds and residue, when there are two daughters and a full-brother; or one-third and two-thirds, as with two half-sisters by the mother, and two full-sisters. The extractor four comes into operation only when there is a fourth and residue, as in the case of a husband and a son; a fourth, a half, and residue, where the heirs are a husband, a daughter, and a full-brother; or a fourth, a third, and residue, as in the case of a widow with both parents. And the only occasions which call for the extractor eight are where the estate is to be divided into an eighth and residue, as in the case of a widow and a son; or an eighth, a half, and residue, as in the case of a wife, a daughter, and full-brother*

Of the remaining extractors, six may be increased to ten, inclusive, and all the intermediate numbers both odd and even. Thus, it is increased to seven in

* Shureefee, Appendix, No. 166.
the case already mentioned of a husband and two full-sisters; and also in the case of a husband, a full-sister, and a half-sister, the share of the two first being each a moiety, or three-sixths, and that of the last being one-sixth. It is increased to eight when a half, two-thirds, and a sixth meet in the same case, as where the deceased has left a husband, two full-sisters, and a mother; or when two moieties and a third are found together, as in the case of a husband, a full-sister, and two half-sisters by the mother. It is increased to nine, at the conjunction of a half with two-thirds and one-third, as in the case of a husband, two full-sisters, and two half-sisters by the mother; or of two moieties, a third and a sixth, as in the case of a husband, a full-sister, two half-sisters by the mother, and a mother. And it is increased to ten when the deceased has left a husband, two full-sisters, two half-sisters by the mother, and a mother: the share of the first being a half or three-sixths, of the second, two-thirds or four-sixths, of the third one-third or two-sixths, and of the last, one-sixth, making together ten-sixths.*

The extractor twelve may be increased to seventeen, and the two intermediate odd numbers, to the exclusion of the even numbers. Thus it is raised to thirteen when a fourth, two-thirds, and a sixth meet together, as in the case of a widow, two full-sisters, and a half-sister by the mother. It is raised to fif-

* Sirajiyah and Shureefeen, Appendix, Nd. 167.
when there are parties entitled to a fourth, two-thirds, and one-third, as a wife, two full-sisters, and two half-sisters by the mother; or at the conjunction of a fourth, two-thirds, and two-sixths, as in the case of a widow, two full-sisters, a half-sister by the mother, and a mother. And it is raised to seventeen when a fourth, two-thirds, one-third, and a sixth, meet together, as in the case of a wife, two full-sisters, two half-sisters by the mother, and a mother.

The extractor twenty-four admits of no more than one increase, which is in the case of a widow, two daughters, and both parents, the share of the first being an eighth or three twenty-fourths, that of the second, two-thirds, or sixteen twenty-fourths, and that of each of the last, one-sixth, or four twenty-fourths, making in the whole twenty-seven parts. This is the case styled Mimbereea, because decided by the Khuleef Alee in the pulpit.

The only doctor of any sect, who considered that the extractor twenty-four is susceptible of any other increase, was Ibn Musood, who was of opinion that it must be raised to thirty-one, when the deceased has left a widow, a mother, two full-sisters, two half-sisters by the mother, and a son who is excluded on account of some one of the impediments mentioned in the second chapter. His dissent from the rest of the learned in the present case arises from the pecu-

* Sirajiyyah and Shureefeeea, Appendix, No. 169.
† Ibid, Appendix, No. 169.
liarity of his opinions on the subject of disqualification, which, as already noticed at the end of that chapter, he considers to have the effect of reducing the portions of other parties, though the disqualified person himself cannot derive any benefit from the reduction. Thus in the case above cited, where others would consider the son in the same light as if actually dead, and the share of the widow being a fourth, the extractor would be twelve raised to seventeen, he would reduce the share of the widow to an eighth, by which means the extractor must become twenty-four, and be accordingly raised to thirty-one by the shares of the other parties*.

* Sirajiyyah and Shureefeea, Appendix, No. 170.
CHAPTER VII.

Of the Arrangement of Estates where several persons are entitled to participate in the same portion.

When there are several persons entitled to the same share, it must be divided among them equally; and if all the shares admit of such division, there is no occasion for any farther operation. Thus, when the deceased has left two daughters, and both his parents, the estate being divisible into six parts, one goes to each parent, and the remaining four are divided among the daughters equally, leaving two to each*.

When there is only one class of sharers, among whom their share cannot be divided without a fraction, and on a comparison of the parcels composing the share, with the individuals who are entitled to it, the numbers are found to be commensurable, divide the number of individuals by the common measure, and multiply all the shares by the quotient. Thus, when the deceased is survived by both his parents and ten daughters, the share of each parent is a sixth, and that of the daughters four-sixths.

* Sirajiyah and Shureefees, Appendix, No. 171.
between them. On comparing four, the number of parcels, with ten, the number of persons among whom they are to be distributed, it is found that they are both measured by the number two; ten is accordingly to be divided by two, and all the shares are to be multiplied by the quotient five. They accordingly become five-thirtieths for each parent, and two-thirtieths for each daughter, making in all thirty parcels exactly.

When, as in the last case, there is only one class of sharers, among whom the parcels constituting their share cannot be divided without a fraction, but the parcels and the individuals entitled to them are incommensurable, the extractor is to be at once multiplied by the number of individuals, as in the case of a husband, a grand-mother, and three half-sisters by the mother. The extractor being six, the estate is divided into that number of parcels, of which three are the husband’s, one the grand-mother’s, and the two remaining are to be divided among the three sisters; where it is evident, that they cannot obtain their portions without a fraction, and that there is no common measure of the number of parcels and the number of individuals among whom they are to be divided. The extractor (6) is accordingly to be multiplied by the number of individuals in the class (3), which gives eighteen parcels;

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* Sirajiyyah and Shureefeen, Appendix, No. 172.
† Sirajiyyah, Appendix, No. 173.
that is, nine to the husband (or $3 \times 3$), three to the
grand-mother (or $1 \times 3$), and the remaining six to the
sisters; each of whom is entitled to two parcels*.

It is obvious that there can be no difference in the
procedure, if, instead of an original extractor, we
take a case where the extractor is increased for the
reason and in the manner explained in the last chap-
ter. Thus, suppose that the deceased is survived by
a husband and five full-sisters, the original ex-
tractor, which is six, is here increased to seven, and
the estate accordingly divided into so many par-
cels, of which three are the husband’s, and four be-
long to the sisters; but four parcels cannot be divid-
ed among five persons without a fraction, and as
there is no common measure of these numbers, the
increased extractor must be multiplied by the whole
number of the sisters, by which means it is raised
to thirty-five, and the parcels increased accordingly;
when fifteen (or $3 \times 5$) will belong to the husband,
and the remaining twenty (or $4 \times 5$) become the
property of the sisters, the portion of each sister
being four parcels†.

The cases already considered being limited to one
class of sharers, who cannot receive their portions
without a fraction, the principles are said to lie be-
tween the shares and sharers, as they depend upon a
comparison of the one with the other. But in the
four cases that follow, there are supposed to be two

* Shureef sa, Appendix, No. 174.
† Sirajiyyah and Shureef sa, Appendix, No. 175.
or more classes of persons who are so situated; and it becomes farther necessary to compare the individuals in one class with those in another; the principles applicable to the case are accordingly said to be between individuals and individuals. They are not intended, however, to supersede the necessity of considering, in the first place, each class of sharers with a reference to the number of parcels allotted to them. On the contrary, it is implied that this is done, before the cases are submitted to the operation of the second set of principles. Thus, if in the case before put of the two parents and ten daughters, we substitute for one of the former three grand-mothers, we shall have two classes amongst whom their portions cannot be distributed without fractions, and the case would properly fall under one of the rules following. But we must nevertheless first reduce the number of the daughters and of the parcels constituting their share, to their lowest terms, and instead of the whole of the former number, or ten, only take that number divided by the common measure; and it is of the quotient or five that we proceed to make use in the future operation. Having premised thus much, I now proceed to the fourth principle.

Fourth principle of arrangement.

When there are two or more classes of sharers, whose portions cannot be distributed to them without a fraction, but the numbers of individuals in the classes are all equal, it is evident that the parcels will be sufficiently increased, so as to be distributable among all without a fraction, by merely multiplying the extractor by the number of persons contained in
one of the classes. Thus, suppose the deceased to have left three daughters, three grand-mothers, and three paternal uncles; the extractor of the case being six, four parcels belong to the daughters, one parcel to the grand-mothers, and the remaining one as residue to the paternal uncles; but none of the parcels can be divided without a fraction between the persons entitled to them, though the number of individuals in each class is the same. Then multiply the extractor (6) by that number (3), and the result is eighteen parcels, which are divisible among all the parties exactly. Thus, the daughters' four-sixths, become twelve-eighteenths, whereof each of them obtains four parcels, and the one-sixth of the grand-mothers and of the paternal uncles, become three-eighteenths, or one parcel to each.*

If, instead of three, there were six daughters in the last case, we should subject them to the operation of the second rule before proceeding to consider them with reference to the individuals in the other classes †; but the result would be exactly the same; for the number of daughters and the number of shares divisible among them, having the common measure two, we should divide the former by it, and the quotient would be equal to the number of individuals in the other classes. That the parcels would still be di-

* Sirajiyyah and Shureefea, Appendix, No. 176.
† This is in fact the case put in the Shureefea, but to simplify the illustration, I have first supposed that the numbers of individuals in the different classes were equal originally.
visible without a fraction is evident; for twelve-eighteenths, which in the last case were distributed among three persons, leaving four parcels to each, would in this be allotted to six, each of whom would be entitled to two parcels.

When there are several classes of sharers, as in the last case, but the numbers of some of them are aliquot parts of others, (as 2 of 4 or 8, and 3 of 9 or 12,) it will be obviously sufficient if we multiply the extractor by the largest number; which is accordingly the principle of the case. Thus, when there are four widows, three grand-mothers, and twelve paternal uncles, the extractor of the case being twelve, the shares are three-twelfths to the first, two-twelfths to the second, and the remainder or seven-twelfths to the last. And it is clear, that none of the shares can be divided among the individuals entitled to them without a fraction; but the numbers of the widows and grand-mothers are each an aliquot part of the number of uncles. Multiply, therefore, the original extractor (12) by that number, and the result will be one hundred and forty-four parcels, which are divisible exactly among all the parties. The 17ths of the widows will thus become 147ths, giving nine parcels to each; the 17ths of the grand-mothers will become 147ths, or eight parcels to each; and the remaining 17ths of the uncles will become 147ths, or seven parcels to each.*

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* Sirnivukh and Shinasooool. Appendix, No. 177.
When the number of individuals in one of the classes which cannot receive its share without a fraction, is found to be commensurable with the number of individuals in another class in the same predicament, the rule is, to divide one of the numbers by the common measure, and multiply the whole of the other by the quotient; then if the product is found to have a common measure with the number of individuals contained in any other class, repeat the same process between the product and such number; but if there is no such measure, multiply the whole of the product by the number; and so on through all the other classes, until the last; then multiply the original extractor of the case (or the increased extractor if it be increased) by the result of the whole multiplication, and the product will give a number of parcels, which it will be found may be divided among all the parties without a fraction*

Thus, suppose the deceased to have left four widows, eighteen daughters, fifteen grand-mothers, and six paternal uncles; rather a strong supposition, it must be allowed, but it will serve equally well for the purpose of illustration. The extractor of the case being twenty-four, there are three parcels, or one-eighth to the widows, sixteen parcels or two-thirds to the daughters, four parcels or one-sixth to the grand-mothers, and only one parcel as residue for the uncles. According to the principle applicable to all

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* Sirajiyah, Appendix, No. 178.
cases, we must first compare the number of individuals in each class with the number of parcels to be divided among them. But on comparing the parcels of the widows (3) with their number (4), we find that there is no common measure between them, and therefore set down four. Between the daughters and their shares, there is the common measure two, and we therefore divide their number (18) by two, and set down the quotient nine. In like manner, finding no common measure of the grand-mothers and their shares, or the paternal uncles and their shares, we set down the full numbers of the respective classes, fifteen and six.

We have thus the numbers four, six, nine, and fifteen, as the elements of our operation under the present rule. But between four and six we find the common measure two; and therefore, according to the rule, divide one of them (6) by the measure, and multiply the quotient (3) by the other (4), which gives us the product twelve; between which and nine there is the common measure three; we accordingly again divide one of these (9) by the measure (3), and multiply the quotient by the other (12), which raises the case to thirty-six. There is still the common measure, three between that number and fifteen, and repeating the process of division and multiplication, we obtain one hundred and eighty, as the result of the whole; and the original extractor, twenty-four, multiplied by that number, gives four thousand three hundred and twenty as the number of parcels into which the estate must be divided.
The common denominator of the fractions which represent the shares having been multiplied by one hundred and eighty, their numerators must be raised to a corresponding height; and the 2/4ths of the widows will thus become 540/2250ths, or one hundred and thirty-five parcels to each; the 1/4ths of the daughters, 256/1500ths, or one hundred and sixty parcels to each; the 1/24ths of the grand-mothers 75/900ths, or forty-eight parcels to each; and the single twenty-fourth of the uncles will become 180/4350ths, or thirty parcels to each.

When there are two or more sets of persons among whom their shares cannot be divided without a fraction, and there is no common measure of the number of individuals in one class, and the number in any other, the case is obviously already in its lowest terms, and nothing more can be done than to multiply all the numbers into each other, and then multiply the original extractor by the result of the whole. Thus, suppose there are two widows, six grand-mothers, ten daughters, and seven paternal uncles. The extractor of the case being twenty-four, the share of the widows is three parcels, which cannot be divided among two without a fraction; and as there is no common measure of three and two, we must take the whole number of the widows for our future operations. The one-sixth of the grand-mothers, constituting four parcels, is in like manner indivisible among six persons without a fraction;

* Sirajiyyah and Shureefees, Appendix, No. 179.
but of four and six there is the common measure two, and we therefore take only half the number of the grand-mothers', or three. The same number also measures the daughters', and the sixteen parcels which constitute their two-thirds, and we accordingly take no more than half of the daughters, or five. As there is only one parcel left to the uncles, it is obvious that they cannot be reduced any farther, and we take their whole number seven. We have thus the numbers two, three, five, and seven to operate with under the present rule; and as there is obviously no common measure of any of them, we multiply the whole together, and the original extractor by the general result. Thus $2 \times 3 \times 5 \times 7 = 210$, and $210 \times 24 = 5040$; which is the smallest number of parcels divisible among all the sharers without a fraction. Of these parcels six hundred and thirty (or $3 \times 210$) belong to the widows, giving three hundred and fifteen to each; eight hundred and forty (or $4 \times 210$) to the grand-mothers, being one hundred and forty to each; three thousand three hundred and sixty (or $16 \times 210$) to the daughters, giving three hundred and thirty-six to each; and two hundred and ten to the paternal uncles, or thirty to each.

*Sirajiyyah and Shareefea, Appendix, No. 180.
CHAPTER VIII.

Of the Distribution of Assets.

After the number of parcels into which the estate is to be divided has been ascertained, the actual distribution of the property can never be a matter of much difficulty. When the assets have been converted into money, where that can be accomplished, the rule for determining the portions of the respective heirs is to multiply the amount of the assets by the number of parcels allotted to each heir, and to divide the product by the whole number of parcels into which the estate is divisible*. Thus, take the case of a husband, a mother and two full-sisters, who are to divide an estate between them, the assets of which, when reduced into money, amount to twenty-five deenars. The extractor being six, raised to eight, the share of the husband is three-eighths; that of the mother, one-eighth, and the share of each sister two-eighths. But three multiplied by twenty-five, and the product, or seventy-five, divided by eight, give nine deenars and three-eighths of

Sirajiyyah, Appendix, No. 181.
a deenar, which are accordingly the share of the husband. In like manner $1 \times 25 \div 8 = 3 \frac{1}{2}$ deenars, which are the share of the mother; and $2 \times 25 \div 8 = 6 \frac{3}{8}$ deenars, which are the share of each sister*; the aggregate of all the shares, or $9 \frac{4}{8} + 3 \frac{1}{2} + 6 \frac{3}{8} + 6 \frac{3}{8}$, being obviously twenty-five deenars, the amount of the assets.

When a common measure can be found of the number of parcels into which the estate is to be divided, and of the amount of assets, the process may be shortened by dividing each number by the measure, and making use of the quotients in the subsequent operation†. Thus, suppose that the estate in the last case had consisted of twenty-four instead of twenty-five deenars; there would then be a common measure of the amount of assets, and the number of parcels; for twenty-four and eight are both divisible exactly by four. Let them be divided, and the quotients will be six and two. Then $3 \times 6 = 2 \times 25$ deenars, the share of the husband; $1 \times 6 = 2 = 3$ deenars, the share of the mother; and $2 \times 6 = 2 = 6$ deenars, the share of each daughter; the aggregate of the shares, or $9 + 3 + 6 + 6$, being twenty-four deenars, or the whole amount of the estate.

The preceding are the rules for distributing the assets among the individual heirs. The rules applicable to classes of sharers are of the same description; but the extractor of the case is substituted for the number of parcels into which the estate can be divided without a fraction.

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* Shureesea, Appendix, No. 182.
† Sirajiyyah, Appendix, No. 183.
If there be any common measure of the extractor and the amount of assets, multiply the number of shares allotted to each class, by the quotient of the assets divided by the common measure, and divide the product by the quotient of the extractor and the common measure*. Thus, in the case of a husband, four full-sisters, and two half-sisters by the mother, the extractor being six, increased to nine, the share of the first is three-ninths, of the second four-ninths, and of the third two-ninths. And, if we suppose the assets of the estate to amount to thirty deenars, we shall have the common measure three of the assets and the extractor, which, when divided by it, will be respectively reduced to ten and three. Then $3 \times 10 \div 3 = 10$ deenars, the share of the husband; $4 \times 10 \div 3 = 13\frac{1}{3}$ deenars, the share of the full sisters; and $2 \times 10 \div 3 = 6\frac{2}{3}$ deenars, the share of the half-sisters by the mother; the aggregate, or $10 + 13\frac{1}{3} + 6\frac{2}{3}$, being thirty deenars†.

When there is no common measure of the extractor, and the amount of assets, we proceed in the same way, only making use of the original numbers in multiplying and dividing‡. Thus, if the estate in the last case were thirty-two deenars, there would no longer be any common measure of the assets, and the extractor nine; we should therefore multiply the parcels in each share by the whole of the former,

* Sirajiyyah, Appendix, No. 184.
† Shureefeesa, Appendix, No. 185.
‡ Sirajiyyah, Appendix, No. 184.
and divide the product by the whole of the latter. So $3 \times 32 \div 9 = 10\frac{2}{3}$ deenars would be the share of the husband; $4 \times 32 \div 9 = 14\frac{2}{3}$ deenars would be the share of the full-sisters; and $2 \times 32 \div 9 = 7\frac{1}{3}$ deenars, the share of the half-sisters by the mother*.

When one of the heirs compounds with the others, for his share of the inheritance, by accepting instead of it a certain sum of money, or some specific article, the case is nevertheless to be arranged on the same principles as if he were to receive his share, in order that the proper ratio may be preserved between the portions of the remaining heirs, which might otherwise be deranged. The remainder of the estate, after deducting the amount of the compromise, is to be divided among the other heirs in proportion to their respective shares. Thus, take the case of a husband, a mother, and a paternal uncle, being the sole heirs of a deceased person, and suppose that the husband relinquishes his share of the estate in lieu of his wife's dower†, which has remained in his hands unpaid up. The extractor of the case being six, the husband's share is three parcels, the share of the mother two, and the one parcel that remains is the property of the uncle. But the husband having compromised his share, the remainder of the assets, after deducting the unpaid dower, is to be divided into

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* Shureefseea, Appendix, No. 186.
† Arabice muhr; the provision made by a husband on marriage for his wife; usually a sum of money, which if not paid constitutes a debt against him.
three parcels, whereof the mother receives two, and the paternal uncle one*. 

Before quitting the subject of the distribution of assets, it may be proper to say a few words on the mode of distribution among creditors.

When the deceased's property, after payment of funeral expenses, is sufficient for the discharge of all his debts, there can be no difficulty in the case, every creditor being paid in full. But if there happens to be a deficiency, the claim of each creditor must be ratably reduced, and the following rule has been adopted for that purpose. Let the claim of each creditor stand in the place of the portion of each heir, and the whole amount of the debts in the place of the number of parcels into which the estate must be divided, so that all the heirs may receive their portions without a fraction; and then proceed to multiply and divide as already directed†. Thus, suppose the assets of an estate to amount to nine deenars, and that the deceased had two creditors, one to whom he was indebted for ten deenars, and the other to whom his debt was five deenars. Here the amount of the debts is fifteen deenars, between which and nine deenars, the amount of the assets, there is evidently the common measure three. And, substituting the debts for the number of parcels in the preceding operations, and the creditors for the heirs, we have ten multiplied by three, (the quotient of nine

* Sirajiyyah, Appendix, No. 187.
† Sirajiyyah and Shureefeea, Appendix, No. 188.
and three,) and divided by five, (the quotient of fifteen and three,) for the portion of the first creditor, which is thus six deenars, and $5 \times 3 \div 5 = 3$ deenars, for the portion of the second.

But if, instead of nine deenars, we suppose the estate to amount to thirteen deenars, after the payment of funeral and other necessary charges, there is no longer a common measure of the debts and assets, and we are reduced to the necessity of operating with the whole numbers. The share of the first creditor will be accordingly $13 \times 10 \div 15 = 8\frac{2}{3}$ deenars, and of the second $13 \times 5 \div 15 = 4\frac{1}{3}$ deenars.

* Shureefea, Appendix, No. 189.
† Ibid, Appendix, No. 190.
CHAPTER IX.

Of the Return.

We have seen that when there is a surplus after the shares have been satisfied, it passes to a class of persons who are called residuaries. If the term is to be understood as comprehending every male who can establish a connection with the deceased through an unbroken line of males, there seems to be no assignable limit to the persons who may be included under it. It must however occasionally happen that the residuary is so remote from the deceased as to be unable to prove his relationship to him, or even in some instances to be unconscious of it himself. And it may be asked, how is the surplus to be disposed of in such an event when there is no person who claims it. According to both Malik and Shafei, it escheats to the Beit-ool-malt; but Aboo Huneesa was of opinion, in conformity with the general sentiments of the companions of the prophet, that it ought to revert to the sharers*. It may still, however, be inquired, whether the surplus shall be immediately distributed among them, with such portion of the inheritance as

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* Sirajiyyah, Appendix, No. 191.

† See ante, page 19.
they are entitled to in their own right, or be reserved for some time, to abide the possibility of a residuary subsequently appearing and establishing his claim to it. A few words therefore may not be improper in this place, as to the amount of evidence which may be required from the claimants of the inheritance, both with respect to their own right, and the absence of other heirs.

It is not considered enough, that the witnesses for the claimants should state generally that they are heirs; but their relation to the deceased, as father, son, or brother, must also be distinctly explained*. It is further required, that the witnesses should declare their ignorance of the existence of any other heir. And where they have omitted to make such declaration, it is the duty of the judge to postpone his decision for a reasonable time, to allow of the appearance of other heirs. But after the expiration of that time, he is then to order a partition of the property among the present claimants†. Nor is he entitled, according to Aboo Huneefa, to require security from them to refund, in case of the appearance of another heir. This appears to have been the practice of some judges in his time, but the precaution is condemned by him as oppressive. Both his disciples, however, considered, that security ought to be taken in such

† Futawa Sirajiyah, Appendix, No. 194. Zukheera, as cited in the Futawa Alumgeeree, Appendix, No. 195.
cases; but it is only where the witnesses have been allowed to retire without declaring their ignorance of the existence of any other heir than the claimants, that there is any difference of opinion between the master and his disciples*. Where the claimant belongs to the class of persons who may be wholly excluded by the existence of other heirs, as a grandfather, brother, or paternal uncle, the property is not to be surrendered to him, if the witnesses have omitted to disclaim any knowledge of the existence of other heirs. Should the claimant be a husband or wife, the greatest portion to which he or she can possibly be entitled, that is a moiety for the former, and a fourth for the latter, is to be surrendered in such circumstances, according to Moohummud; but the least, that is a fourth for the former and an eighth for the latter, in the opinion of Aboo Yoosuf †. Having premised these few general observations, we now proceed to trace the destination of the surplus, and the manner of distributing it, in the absence of residuaries, which form the doctrine of what is technically called the Return.

"The return," says the author of the Sirajiyyah, "is the converse of the increase; and it takes place in what remains above the shares of those entitled to them when there is no legal claimant of it; this surplus is returned to the sharers, according to their

* Hidaya, Appendix, No. 196. The translation of this passage by Mr. Hamilton (vol. ii. p. 651) is very incorrect.
† Futawa Sirajiyyah, Appendix, No. 197.
Fourfold division of cases.

rights, except the husband and wife.* The exclusion of the husband and wife has given rise to a four-fold division of the cases in which the return takes place†. Thus, there may be only one class, or there may be two or three classes, of persons who are entitled to participate in it; and in each of these cases there may, or may not be, a person who has no right to participate, in other words a husband or wife.

First case. Rule.

In the first case, where there is only one class of sharers, and neither husband nor wife, the rule is to divide the property into as many parcels as there are individuals in the class, and to give a parcel to each. As when the deceased has left two daughters, or two sisters, or two grand-mothers, the estate is to be divided into two parcels, and one given to each, on account of the equality of their rights in the share and in the return ‡.

The reader has been already made acquainted with the simple and ingenious expedient of the Muhammadan lawyers for reducing the shares ratably when the estate is insufficient to meet the claims of every person entitled to participate in it. It consists, as has been explained, in raising the extractor of the case, or, in other words, the common denominator of the fractions in which the shares are expressed, while their numerators remain unchanged. The return being

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* Appendix, No. 191.
† Sirajiyyah, Appendix, No. 198.
‡ Siraliyvah and Shureefah. Appendix, No. 198.
the converse of the increase, the operation is to be reversed by reducing the extractor of the case, or the common denominator of the shares, while the numerators are left unaltered. And in both cases, the new extractor, whether increased or reduced, is the aggregate of all the shares. Thus, where the deceased has left a husband and two full-sisters, the extractor of the case being six, is raised to seven, the sum of the three shares of the former, and four of the latter, which become three and four-sevenths respectively. And in the case of a mother and daughter being the sole heirs, the extractor, which is also six, is reduced to five, the aggregate of the one-sixth of the former, and four-sixths of the latter, which become in like manner one fifth and four-fifths respectively.

II. When there are two or three classes of sharers, and neither husband nor wife, arrange the case according to the number of shares; that is, divide the estate into as many parcels as may correspond with the number of shares to which the parties are entitled. Thus, where the sole heirs of the deceased are a grand-mother and a half-sister by the mother, whose shares are each a sixth, divide the estate into two parcels, the aggregate of their shares, and give one parcel to each. In like manner, when the heirs are two half-brothers or sisters by the mother, and a mother, the shares being two-sixths and one-sixth, the estate is to be divided into three parcels, whereof

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* Sirajiyah, Appendix, No. 199.
† Shureefsee, Appendix, No. 200.
one belongs to the mother, and two to the half-brothers or sisters*. So, where the deceased has left a daughter and a son's daughter, or a daughter and mother, the division is into four parcels, whereof three belong to the daughter, and one to the son's daughter or to the mother†. And in the case of a daughter, son's daughter, and a mother, whose shares are respectively three-sixths, one-sixth, and one-sixth, the estate is to be divided into five parcels, whereof three are the property of the first, and one of each of the others‡.

III. When there is a husband or wife, and only one class of persons entitled to participate in the return, the estate is in the first place to be divided into the smallest number of parcels, which will admit of the extraction of the share of the person who is not entitled to participate, and the share of such person to be deducted. If the remainder be divisible among the sharers without a fraction, no further operation is necessary. Thus, if the deceased has left a husband and three daughters, the share of the former being a fourth, the smallest number of parcels into which the estate must be divided for its extraction is four; and when the husband has taken his fourth, the remaining three-fourths are divisible among the daughters without a fraction§. But suppose, that instead of three daughters, there are six; here the

* Shareaeesa, Appendix, No. 201.
‡ Ibid, Appendix, No. 203.
§ Sirajiyyah and Shareaeesa, Appendix, No. 204.
remaining parcels cannot be divided among them without a fraction. The parcels, and the number of individuals entitled to them are, however, commensurable by three; and we, therefore, according to the rule which has been so often explained, divide the number of the individuals by the common measure, and multiply the extractor by the quotient. Thus, six divided by three gives two, which being multiplied by four, the product is eight parcels, and deducting two for the husband, there remain six for the daughters, or one to each*. If there is no common measure of the remaining parcels, and of the number of individuals who are to receive them, we must multiply the extractor by the whole number. Thus, if we substitute five daughters for six, in the last case, the three parcels which remain after the fourth of the husband has been deducted, cannot be divided among them without a fraction, and there is obviously no common measure of three and five. We accordingly multiply the extractor four by five, and the product or twenty is the number of parcels into which the estate is to be divided; one fourth or five parcels being the portion of the husband, and the remaining fifteen being that of the daughters, or three parcels to each†.

IV. When there is a husband or wife, and two or three classes of persons who are entitled to the re-

* Sirajiyyah and Shureeefees, Appendix, No. 205.
† Ibid, Appendix, No, 206.
Rule.

When the remaining parcels and sharers are commensurable.

turn, the share of the person who has no right to participate in it is first to be extracted, as in the last case. And if the remaining parcels quadrature with the number of sharers, there is no necessity for any further process than to distribute them among them. It is to be observed, however, that this can occur only in one case, that is, when the share of the person who is not entitled to participate in the return is a fourth, and there are three-fourths to be divided among the sharers. As where the deceased has left a widow, a grand-mother, and two half-sisters by the mother*. The share of a widow being a fourth in such circumstances, four is the smallest number of parcels into which the estate can be divided so as to admit of its being extracted; and the share of the grand-mother being a sixth, while that of the two sisters is exactly double, or one-third, the three remaining parcels are obviously divisible among them without a fraction†.

If the parcels which remain after deducting the share of the person who is not entitled to participate in the return, do not quadrature with the shares of the persons who are entitled to participate, multiply the extractor of the case by the aggregate of these shares, and the product will be a number of parcels out of which it will be found that all the shares may be extracted without a fraction‡. Thus, where the sole

* Sirajiyyah, Appendix, No. 207.
† Shurpeesa, Appendix, No. 208.
‡ Sirajiyyah, Appendix, No. 209.
heirs of the deceased are a wife, two daughters, and a grand-mother; the share of the first in such circumstances being an eighth, the least number of parcels into which the estate must be divided is eight, and after setting apart one for the widow, seven remain for the daughters and grand-mother. The share of the daughters being two-thirds, and that of the grand-mother a sixth, the aggregate of the shares when reduced to fractions of the same denomination is five, and as seven parcels cannot be distributed among five sharers without a fraction, multiply the extractor or eight by five, and the product forty is the number of parcels into which the estate must be divided. Of these one-eighth or five parcels belong to the widow, and of the remaining thirty-five, four-fifths or twenty-eight parcels are the property of the daughters, and one-fifth or seven parcels that of the grand-mother.

If instead of one wife and one grand-mother, as in the preceding illustration, we suppose that there are several of each, and also enlarge the number of daughters, the process will be the same so far as relates to the doctrine of the return, but the case must be further subjected to the operation of some of the rules mentioned in chapter seventh. Thus, if the deceased had left four widows, nine daughters, and six grandmothers, the shares would be the same as in the last case, though divisible among a greater number of individuals. The portion of the widow being five-fortieths, that of the daughters twenty-eight, and the portion of the grand-mothers seven, we first, according to the second rule, consider if there be any common measure
of the classes, and the individuals composing them. But there is no common measure of five and four, nor of twenty-eight and nine, nor of seven and six, and we are obliged to operate with the whole numbers. We next compare the individuals in the different classes with each other, and find the common measure two of the number of widows and the number of grand-mothers. Dividing six by two, and multiplying the quotient by four, according to the first rule, we have the product twelve, which we proceed under the same rule to compare with the number of daughters, and find that the numbers are both measured by three. By dividing and multiplying as before, we obtain the product thirty-six, which (following the same rule and) multiplying by forty, the extractor of the case, the result is fourteen hundred and forty parcels, into which the estate must be divided before the portions of the respective individuals can be extracted without a fraction. Having multiplied the denominators of the fractions which represent the shares by thirty-six, we must of course increase the numerators in the same ratio, and have thus 5×36=180 parcels for the portion of the widows, or 45 to each; 28×36=1008 parcels for the daughters, or 112 to each; and 7×36=252 parcels, for the portion of the grand-mothers, or 42 to each.

CHAPTER X.

Of vested Inheritances.

When some of the portions have become inheritances by the death of the parties entitled to them, before the estate has been actually divided, the number of parcels must be enlarged so as to include the representatives of the deceased heir. The procedure will be exactly the same as that which has been explained in the seventh chapter, if we substitute for the original shares in that chapter the arrangement of the estate of the first deceased, that is, the number of parcels into which it must be divided, so as to give the individuals of each class their portions without a fraction, and substitute for this arrangement the arrangement of the estate of the deceased heir, that is, the number of parcels into which it must be divided, so as to give his representatives their portions without a fraction.

Thus, take the case of a woman who has died, leaving a husband, a daughter, and a mother. And suppose, that all the heirs also die before the inheritance has been divided; the husband first, leaving a widow and both parents; then the daughter, leaving two sons, a daughter, and a grand-mother, who, it is...
to be observed, is the mother of the deceased; and last, the mother, leaving a husband and two brothers. Here we must first ascertain the portions of the original heirs, and as they present the concurrence of a fourth, a half, and a sixth, we must divide the estate into twelve parcels, whereof three are the husband’s, six the daughter’s, and two the mother’s, leaving one to the residuary. But there happens to be no residuary, and the surplus reverting to the daughter and mother, the case must be arranged on the principles of the return. After the share of the husband has been extracted, there remain three-fourths, which cannot be divided among the four shares of the daughter and mother; that is, the three-sixths of the former and the one-sixth of the latter, without a fraction; and the extractor of the husband’s share is accordingly to be multiplied by the aggregate of the shares of the daughter and mother. The number of parcels into which the original inheritance must be divided is thus raised to sixteen, whereof four are the husband’s, nine the daughter’s, and three belong to the mother.

Continued. Having arranged the original inheritance, we proceed in the same way to arrange each of the secondary inheritances, and if we find that the number of parcels which fall to the share of the original heir can be divided among his representatives without a fraction, there is no occasion for any farther procedure. Thus, the representatives of the husband being his widow and both parents, the share of the first is a fourth, and the remaining three-fourths are to
be distributed to the others in the proportion of two parts to the father and one to the mother. The four parcels reserved for the husband in the primary inheritance are therefore obviously divisible among his representatives without a fraction, his father’s portion being accordingly two-sixteenths of the whole, his mother’s one-sixteenth, and his widow’s the same*.

But if the portion of the original heir cannot be divided among his representatives without a fraction, we first consider whether there be any common measure of the number of parcels which fall to the original heir, and of the number into which his own inheritance must be divided; and if there be such common measure, we divide the latter number by it, and multiply the quotient by the whole number of parcels into which the first inheritance was divided†. Thus, in the case of the daughter who has died, leaving two sons, a daughter, and a grand-mother, the secondary inheritance being divisible into six parts, that is, two for each son, one for the daughter, and one for the mother, there is the common measure three of that number, and of the nine parcels to which the original heir was entitled in the primary inheritance. We accordingly divide six by three, and multiply the quotient by sixteen, which gives the product thirty-two, as the number of parcels to

* Sirajiyyah and Shureefees, Appendix, No. 211.
† Sirajiyyah, Appendix, No. 212.
which the original estate must be raised, so as to include the shares of the representatives of the daughters. Raising all the shares in proportion, the representatives of the husband shall receive $\frac{1}{3}$ths among them, or $\frac{4}{9}$ths to his father, and $\frac{2}{9}$ths to each of his mother and widow; while the nine-sixteenths of the daughter will become $\frac{1}{3}$ths, whereof three parcels shall belong to her mother, and the remaining fifteen be divided among her children in the usual ratio of two portions to the males and one portion to the females, thus making the share of each son $\frac{4}{9}$ths, and that of the daughter $\frac{2}{9}$ths.

If there be no common measure of the number of parcels which fall to the original heir, and of the number into which his own inheritance is divided, we multiply the whole of the latter into the full amount of parcels into which the first inheritance is divisible. Thus, in the case of the mother who has died leaving a husband and two brothers, the first inheritance having been already raised to thirty-two parcels, her three-sixteenths become $\frac{3}{8}$ths, to which the three that she became entitled to as grand-mother to the daughter must be added, thus making in all $\frac{7}{9}$ths as the portion to be divided among her representatives. Her own succession is divisible into four parts, and there is obviously no common measure of nine and four; thirty-two is accordingly to be multiplied by four, and the product, or one hundred and

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* Shureefseea, Appendix, No. 213.
† Sirajiyyah, Appendix, No. 214.
twenty-eight, is the number of parcels into which the original inheritance must be divided, so as to
give the representatives of the mother their shares
without a fraction. Again, raising the shares of all
the other parties in proportion, the representatives
of the first deceased will receive \( \frac{1}{2} \)ths among them,
or sixteen parcels to his father, and eight to each of his
mother and widow; the representatives of the second
deceased will receive \( \frac{1}{3} \)ths among them, or twenty-
four parcels to each son, twelve to the daughter, and
the same to the mother; while the \( \frac{1}{6} \)ths of the grand-
mother will become \( \frac{1}{12} \)ths, whereof eighteen parcels
shall belong to her husband, and the remaining par-
cels shall be divided equally among her brethren,
thus, giving nine to each. The sum of 32, 72, and 36
is 140; but from that number twelve is to be deducted,
being the share of the grand-mother as mother to the
daughter, which is included both in seventy-two and
thirty-six; and the remainder will be one hundred and
twenty-eight, being the whole number of parcels
into which the inheritance is divisible*.

* Shureefea, Appendix, No. 215.
CHAPTER XI.

Of Distant Kindred.

The distant kindred are defined to be "all relatives who are neither sharers nor residuaries," and, on failure of these classes, they are entitled to the inheritance, according to the report of most of the prophet's companions. Zeid the son of Thabit, however, was of opinion that the property ought rather to be given to the Beit-oool-Mal; in which respect he has been followed by Malik and Shafei. But Aboo Huneefa and his followers have adopted the more general opinion*; for which there is the further sanction of a text of the Kooran, though it does not occur in the chapter on inheritance.

Of the distant kindred there are four classes. The first class comprehends the children of daughters, and of son's daughters, how low soever, and whether male or female. The second are the excluded or false grand-fathers, how high soever, as the maternal

* Sirajiyyah, Appendix, No. 216.
grand-father and his father, and the excluded or false grand-mothers, how high soever, as the mother of the maternal grand-father, and the mother of the maternal grand-father's mother. The third class are the children of sisters, whether male or female, and the daughters of brothers, how low soever, and whether the sister or brother from whom they are descended was connected with the deceased through both parents, or only through one; also the sons of half-brothers by the mother, how low soever*. And the fourth class are the paternal aunts of the deceased, that is, the sisters of his father, whether of the whole or half-blood; his paternal uncles by the mother, that is, the half-brothers of his father by the same mother; his maternal uncles, and aunts of whatever description; and the children of all these persons, how low soever, and of whichever sex†.

Order of succession. There are contrary reports of Aboo Huneefu’s opinion respecting the order in which the several classes of the distant kindred are to be called to the

* Sirajiyyah and Shureefseea, Appendix, No. 217.
† Ibid, Appendix, No. 218. The author of the Sirajiyyah concludes his general summary of the classes by observing, “that all who are related to the deceased through them are among the "distant kindred." But the summary is still imperfect, as the commentator remarks; not extending to many persons who are also included among them. The reader will find hereafter that the distant kindred are in fact as unlimited as I have endeavoured to shew the residuaries to be.
succession. But the more generally received, and that according to which cases are decided, is that they are called in the order in which they are above enumerated*. The rules for the preference of individuals are nearly the same for all the classes, and occupy a larger space in the Shureefseea than they appear to me to deserve; considering how rarely it can happen that a person should die without leaving either a sharer or some known residuary to inherit his property, in which case only there is room for the succession of the distant kindred. All that I propose in this place is a full exposition of the rules, as they are applicable to the first class, to which I shall refer the other classes as far as possible, noticing however at some length where there is any difference in their mode of application.

§ First class of distant kindred.

Of the first class of the distant kindred the nearer to the deceased are preferred to the more remote. Thus, the daughter of a daughter will take the whole inheritance, though alone, before daughters of a son’s daughter†. When the claimants are equal in degree, that is, both the same number of steps from the deceased, the child of an heir is preferred to the child of a distant kinsman or kinswoman; as the daughter of

* Sirajiyyah, Appendix, No. 219.
† Ibid, Appendix, No. 220.
a son's daughter to the son of a daughter's daughter. If the claimants are not only equidistant from the deceased, but also on an equal footing as to descent, all or none of them being the offspring of heirs, respect is to be had to their sex, according to Aboo Yoosuf, and the property to be divided among them in the proportion of two parts to a male and one to a female, whether they claim from ancestors of the same or different sexes. Moohummuud assents to this doctrine, when the ancestors are of the same sex, but otherwise he refers to their sex as the criterion for determining the rights of their descendants, giving to the branches the inheritance of the roots. Thus, when the deceased has left the son of a daughter, and the daughter of a daughter as his sole heirs, his property is to be divided into three parts, according to Aboo Yoosuf, by reason of the sex of the claimants, two-thirds being the portion of the son, and one-third that of the daughter; while it is to be distributed in the same way according to Moohummuud, the persons through whom their right is derived, being of the same sex. But if we carry the heirs in the last case a step farther down, and suppose that the deceased has left the daughter of a daughter's son and the son of a daughter's daughter, the opinions

* Sirajiyyah, Appendix, No. 221. By the child of an heir is here meant the child of a sharer, as the author of the Shureefee concerning in a subsequent part of his work.

† Sirajiyyah, Appendix, No. 222.
will no longer coincide; for while Aboo Yoosuf, looking only to the sex of the claimants, would still distribute the property in the same way, Moohummud, having respect to the sex of the ancestors in the second generation, where they first differ, would divide the property into three portions at that stage, by which means two parts would descend in the next generation to the daughter as the representative of her father, and one part to the son as the representative of his mother*. The opinion of Moohummud, which has certainly the appearance of being more complex than that of Aboo Yoosuf, was at first entertained by the latter doctor himself, though he subsequently saw reason to depart from it, and it is conformable to the more general report of Aboo Huneefa’s judgment. For which reason, and because it is also considered to be more agreeable to the general principle of his doctrine respecting the succession of the distant kindred, it has been adopted by his followers as the rule of decision†. It seems also to be fairly deducible from an admitted decision of the companions of the prophet in the case of a paternal and a maternal aunt, two-thirds having been awarded to the former and one-third to the latter; which Moohummud very justly observes cannot be reconciled with, Aboo Yoosuf’s principle of looking only to the sex of the claimants; for accord-

* Sirajiyyah and Shureefea, Appendix, No. 223.
† Shureefea, Appendix, No. 224.
ing to that the property ought to have been distributed in moieties*.

In the case already put, the branches were equal in number to the roots, and there was a difference of sex among the latter only at one stage. To illustrate the doctrine of Moohummud more fully, we must vary the case, and let us first suppose that the deceased has left distant kindred at a low stage of descent, and that the sex of the persons through whom they are connected with him is different at several of the intermediate stages. In this case, Moohummud's rule is to divide the property at the stage where the difference of sex first appears, on the principle of two parts to the males and one part to the females. He then separates all the males and females at that stage into two classes; and collecting the portions of all the males into one fund, he divides it among their descendants at the next stage, where a difference of sex appears, on the same principle of giving two parts to the males and one part to the females. The portions of the females are divided in the same way among their descendants; and the process continued with both classes, until he arrives at the actual claimants, who receive the portions of their immediate predecessors†. Thus, to take a case in the Shureefseea, let us suppose, however extravagant the supposition, that the deceased has left twelve descendants in the sixth stage of

* Shureefseea, Appendix, No. 225.
† Sirajiyyah, Appendix, No. 226.
descent, of different sexes themselves, and also connected with him through persons of different sexes, according to the following scheme:

*Deceased.*

|----|----|----|----|----|----|----|----|----|----|----|----|

Here there are twelve claimants, of whom three are males and nine females, all being in the same degree, and none of them the child of an heir. According to *Aboo Yoosuf*, as each son is equivalent to two daughters, the estate is to be divided into fifteen parcels, whereof the sons shall have two each, leaving nine, or one each, to the daughters. But according to *Moohummud*, the division is into sixty parcels, as we shall see on arranging the scheme upon his principles. Thus, there being three sons and nine daughters in the first stage, the property must be there separated into fifteen parcels, or six to the sons and nine to the daughters. Then following the portions of the sons, we find that there is no difference of sex among their descendants in the second stage, but that in the third, a son occurs with two daughters. The six parts of the sons are therefore here to be divided, the son taking half or three parts, which are transmitted to his descendant in the lowest line as
his representative, and the two daughters the remaining three parts. These three parts undergo a fresh division at the next stage where a difference of sex appears, two parts being the property of the son, and transmissible to his daughter, and the remaining third being the right of the daughter, and transmissible to her descendant in the same way. Thus, the shares of the first three claimants, commencing at the left hand, are three and two-fifteenths, and one-fifteenth, of the whole property. The portions of the nine daughters in the first stage being also collected into one fund, pass through the second generation, which is entirely composed of females, without undergoing any alteration; but in the third, we find three sons and six daughters; and the nine parts are to be distributed among twelve persons, each son being equal to two daughters. This cannot be done without enlarging the number of parcels into which the whole inheritance is to be divided; and, as we have the common measure three of fifteen and twelve, we divide the latter by it, according to the rule so often explained, and multiply the quotient four into fifteen, which raises the number of parcels to sixty, and the nine-fifteenths of the daughter’s become accordingly thirty-six sixtieths. Of these the three males in the third generation take half or eighteen, which are again to be divided into two equal parts at the next stage, by reason of the occurrence of a son with two daughters: the moiety or nine parts of the son passing to his representative in the lowest line; and the nine parts reserved for the two
daughters passing without farther alteration through the fifth stage, and being divisible at the next or lowest, by reason of the occurrence of a son and daughter, the former taking six parts and the latter three. The shares of the six females in the third generation being the same as those of the three males, or eighteen parcels, are divided into two lots at the fourth stage, twelve parcels being appropriated to the three sons, and six to the daughters. The twelve parcels undergo a fresh division in the fifth stage, by reason of the occurrence of a son with two daughters; the former taking the half or six, which pass to his representative in the last line; and the latter the remaining six, which are subject to a still farther division by reason of the occurrence of a male and female in the lowest stage, the male receiving four parcels and the female two. The six parcels of the three last females in the fourth line are in like manner divided into two parts at the fifth stage; the son taking three parcels, which descend to his daughter; and the remaining three being divisible in the last stage between a son and a daughter, the former takes two parcels and the latter one parcel. Reducing the portions of the three first claimants to the left of the scheme from fifteenths to sixtieths, and raising the numerators of their shares proportionably, the shares of all the claimants will be as follows:—taking them in the order in which they stand, viz. 12, 8, 4, 9, 3, 6, 2, 6, 4, 3, 2, 1; which are accordingly their portions upon the principles of Moohummud.

* Shureefea, Appendix, No. 227.
In all the cases put hitherto, the branches were equal in number to the roots, each ancestor having only one descendant among the claimants, and in each of the intermediate lines. Let us now suppose, that some of the roots have several branches, and we shall find, that in these circumstances the doctrine of Mookummud is subject to some modification. Thus, suppose that there are five claimants, descended in the fourth degree from three ancestors, as in the following scheme:

Deceased.

daughter  daughter  daughter
son       daughter  daughter
daughter  son       daughter
dr.      dr.          daughter  son  son

According to Aboo Yoosuf the property ought to be divided into seven parcels, agreeably to the number of branches or claimants, the two sons being equivalent to four daughters; each daughter would accordingly reserve one share, and each son two shares. Mookummud also would divide the property into seven parcels.; but on different principles, and he would distribute them differently; his rule in such circumstances being to consider the sex in the roots, but the number of parcels in the branches. Thus, the difference of sex first appears in the second stage, where there is a son with two daughters. The portion of the son being equal to that of both daughters, the estate ought to be divided into four parts, whereof two would go to the son, and one to each of the daughters. But the son has two branches
that is two daughters among the claimants, and the
sex being taken from the root, and only the number
from the branches, the single son becomes equivalent
to two, and his shares are accordingly raised to four.
Of the second daughter there is only one branch;
but of the third there are two branches, namely, two
sons in the line of the claimants; and the sex being
considered in the root at the first stage where the dif-
ference appears, and the number in the branches, the
single daughter in the second stage is equivalent to
two daughters, and her share accordingly doubled.
The estate is thus divided at the second stage into
two lots; one containing four parcels for the son, and
the other three parcels for the daughters. The por-
tion of the son passes without division, till it reaches
his two grand-daughters, who are each entitled to two
parts; while the three parts of the daughters undergo
a new division in the third stage, where there is a son
and daughter; but the daughter having two branches,
her share is doubled, becoming the same as the son's:
so that, one-seventh and a half of a seventh compose
the share of each, and pass to their respective repre-
sentatives. The daughter being represented by two
sons, her portion must be farther divided into two
parts, and it will be found, that the whole estate
must be arranged into twenty-eight parcels, in order
that the claimants may receive their shares without a
fraction*. The portions of all, taking them in the
order in which they stand, and beginning from the

* Sirajiyyah and Shureefee, Appendix, No. 226.
left, will accordingly be as follows, viz. 8, 8, 6, 3, 3, which added together are twenty-eight parcels.

It may happen that some of the distant kindred of the first class are descended from the deceased through both parents. Thus, suppose a person to have left a great grand-son and two great grand-daughters, who are neither sharers nor residuaries, and the last of whom are related to him by both sides, as in this scheme*; viz.

Deceased.

daughter daughter daughter
daughter son—daughter
son 2 daughters

According to *Aboo Yoosuf*, the property is in this case to be divided into three equal parts; for the females being doubly related are considered equivalent to two on either side, and the property of the deceased is in the same situation as if he had left four great grand-daughters and one great grand-son, two-thirds of the estate passing to the former and one-third to the latter†. *Moohummud*, on the other hand, would divide the property into twenty-eight parcels, giving twenty-two to the daughters, and only six to the son. This is easily explained upon his principle of considering the sex in the roots, but the number of parcels in the branches. The difference of sex appearing first in the second stage, where there

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* Sirajiyyah, Appendix, No. 229.
† Sirajiyyah and Shureefseem, Appendix, No. 230.
is a son with two daughters, and one of the daughters
and the son having each two branches, they are to
be considered in the same light as if they were two
sons and two daughters; but the share of one son is
equivalent to that of two daughters, and there is also
another daughter, by which means, the number
of parcels is swelled to seven, whereof the son would
take four and the daughters three. Arranging the
shares of the males and the shares of the females into
separate lots, the four parcels of the son would de-
scend to his daughters, giving two to each, and the
three parcels of the daughters pass in like manner
to their descendants, that is, the same two daughters
and the son. The portion of the latter being equi-
valent to that of two females, the three parcels must
be divided into four parts, which cannot be accom-
plished without a fraction, and there is no common
measure of three and four; we must therefore multi-
ply seven by four, and the product or twenty-eight
will be divisible among all the claimants without a
fraction. The four parcels of the male in the second
stage will thus become sixteen, giving eight to each
of the great grand-daughters; and the three parcels
of the females in the same stage will become twelve,
of which the half or six parcels will pass to the great
grand-son, and the remaining six to the great grand-
daughters, which with the other sixteen parcels;
will make their shares twenty-two, or eleven to
each.

* Sirajiyyah and Shureeefea, Appendix, No. 231.
§ Second class of distant kindred.

There is little difference between the distant kindred of the first and second classes, except that they recede from the deceased in opposite directions. The rules for the succession of both are nearly the same. Thus in the second, like the first class, proximity to the deceased forms the principal ground of preference, the nearer taking precedence of the more remote by whatever side related*. The maternal grand-father is accordingly preferred to all the others, as being the only false ancestor in the stage immediately preceding the parents of the deceased, and the father of the paternal grand-mother is in like manner preferred to the father of the paternal grand-mother’s mother†. When the claimants are in the same degree of proximity to the deceased, he whose right is derived through an heir is entitled to preference, according to some of the followers of Aboo Huneefa‡. Thus, among those who hold this opinion, the father of the mother’s mother, who is a true grand-mother, and therefore an heir, is preferred to the father of the mother’s father, who is himself only a false grand-father, and therefore not an heir§. But others reject this distinction, dividing the pro-

* Sirajiyyah, Appendix, No. 232.
† Shureefeea, Appendix, No. 233.
‡ Sirajiyyah, Appendix; No. 234.
§ Shureefeea, Appendix, No. 235.
property at once according to the next rule, and giving, in the case put, two-thirds to the father of the grandfather, and the other third to the father of the grandmother*. When none of the claimants can shew a ground of preference, either by proximity, or relationship through an heir, the property is to be divided according to the difference of sex, on the principle of two parts to males and one part to females; but it is only when the claimants are all on the same side, and their relationship to the deceased continued through persons of the same sex, that the difference is to be considered in the persons of the claimants themselves. When they are connected through persons of different sexes, the property is to be divided at the stage where the difference first appears, and distributed in the manner already explained. If the difference appears at the earliest stage, that is, if some of the claimants are related to the deceased by the father's side and some by the mother's, the property is to be divided ab initio into three parts, whereas two are to be distributed among the distant kindred on the paternal side, and one among those of the maternal†.

§ Third class of distant kindred.

The third class of distant kindred comprises, as already mentioned, the children of sisters and the daughters of brothers absolutely, with the sons of

* Sirajiyyah and Shureefseea, Appendix, No. 236.
† Sirajiyyah, Appendix, No. 237.
half-brothers by the mother; and the rules for their succession are similar to those which have been explained for the first class. That is, the nearest to the deceased is first entitled to the inheritance, and of claimants equal in proximity, the child of a residuary is preferred to the child of a distant kinsman or kinswoman. Thus, when the claimants are the daughter of a brother's son, and the son of a sister's daughter, whether the brother and sister were related to the deceased through both parents or by the father only, or one by both parents, and the other by the father, the daughter of the brother's son shall take the whole property, because her father ranks among residuaries, while the parent of the other claimant, that is the sister's daughter, is no more than a distant kinswoman†.

If the brother and sister, in the last case, from whom the claimants are descended, had been related to the deceased by the mother's side only, the property would be distributed differently, both according to Aboo Yoosuf and Mookumud; though they are not exactly agreed as to the precise mode of distribution. The former would divide the property among the claimants, according to the common rule of giving two parts to the male and one part to the

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* In the first class, the preference is given to the child of a sharer; but neither can the child of a residuary be in the same degree with the child of a distant kinsman in the first class, nor the child of a sharer be in the same degree with the child of a distant kinsman in the third class. *(Shureefeeea, p. 159.)*

† Sirajiyyah, Appendix, No. 238.
female. It is true, that though this be the general principle, there is a special exception with respect to the persons through whom their rights are derived; brothers and sisters by the mother only succeeding equally, without any regard to difference of sex, upon the express authority of the *Kooran*. But this exception is not to be extended by analogy to cases where the similarity is not complete in all respects; and as the children of half-brothers and sisters by the mother are not in circumstances precisely similar to their parents, having no right for instance to inherit as sharers, they are subject to the operation of the general rule. *Moohummud*, however, disputes the justness of this reasoning, because the sole right of the children arises in consequence of the propinquity of their parents to the deceased; and he accordingly declares, that the property ought in this case to be divided equally between the claimants, without any preference of the male over the female sex. It is to be observed, that the general current of tradition is in favor of his opinion.

When the claimants are equal in degree, and none or all of them the children of residuaries, or some the children of residuaries and some of sharers, respect is to be had, according to *Aboo Yoosuf*, to the strength of propinquity. So that the descendant of a full brother would be preferred to the descendant of a brother by the father only, and the latter be preferred to one descended from a brother of the deceas-

* Sirajiyyah, Appendix, No. 239. See ante, page 70.
ed by the mother only*. Moohummud, however, first divides the property among the brothers and sisters, with reference to the sides of their relationship to the deceased, and the number of their branches, and then distributes what may fall to the share of each sex among the branches, in the manner explained for distant kindred of the first class. Thus, suppose the deceased to be survived by three nieces, the daughters of different kinds of brothers, and by three nephews and three nieces, the children of different kinds of sisters, after the following scheme:

Full br. full sr. br. by fr. sr. by fr. br. by mr. sr. by mr.

daughter, $\frac{s}{d}$  dr. $\frac{s}{d}$  daughter, $\frac{s}{d}$

According to Aboo Yoosuf, the whole property is to be divided among the descendants of the full-brother and sister, in the proportion of two parts to the male and one part to each of the females, respect being had to the sex of the claimants, and the strength of their propinquity to the deceased. On failure of descendants of the whole blood, the property would pass to the descendants of the half-brother and sister by the father, and be distributed among them in the same way. And on failure of them, it would be distributed in like manner among the descendants of the half brother and sister by the mother†. According to Moohummud, on the other hand, one-third of the property is to

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* Sirajiyah and Shareaseen, Appendix, No. 240.
† Sirajiyah, Appendix, No. 241.
be allotted to the descendants of the half-brother and sister by the mother, and divided equally among them, on account of the equality of their roots. The sister having two branches, viz. a son and a daughter, is accounted the same as two sisters, and her portion is therefore two-thirds of the third, which accordingly pass to her descendants, among whom they are equally divided; and the remaining third of that third, being the portion of the brother who has only one branch, goes to his daughter. Two-thirds of the whole property still remain, which belong to the descendants of the full-brothers and sisters, who it may be remembered entirely exclude half-brothers and sisters by the father. The sister here has also two branches, by which means her portion is doubled, and raised to an equality with that of her brother; the two-thirds are accordingly to be divided into moieties, whereof one moiety, that is a third of the whole property, passes to the daughter of the full-brother, and the remaining moiety, or third of the whole, is to be divided among the children of the full-sister in the proportion of two parts to the son and one part to the daughter. The whole estate will thus be arranged by a separation into nine lots; whereof three, passing to the children of the half-brother and sister by the mother, will be divided among them equally, giving one lot to each; and of the remaining six lots, which belong to the children of the full-brother and sister, three will pass to the daughter of the brother,
two to the son of the sister, and one lot to her daughter*.

If instead of brother's daughters, as in the last case, the deceased were to leave descendants of different kinds of brothers through their sons, as if, for instance, he were survived by the daughter of a full-brother's son, the daughter of the son of a half-brother by the father, and the daughter of the son of a half brother by the mother, the first would take the whole property, by the general agreement of the learned, as being the child of a residuary, and having also the strength of propinquity†.

Some commentators have in this place adduced a case, to illustrate the mode of appreciating the sides of relationship, and the branches in the roots. Thus, suppose the deceased to have left the son of a half-brother by the father, two daughters of the son of a half-sister by the father, who are also the children of a full sister's daughter, and the daughter of the son of a half-sister by the mother; as in the following scheme:

\[
\begin{array}{c}
\text{h. B by F} \quad \text{h. S by F} \quad \text{Full sister h. S by M} \\
\text{daughter} \quad \text{son, daughter} \quad \text{son} \\
\text{son, two daughters, daughter.}
\end{array}
\]

According to Aboo Yoosuf, the whole property ought here to go to the grand-daughters of the full-

* Sirajiyyah and Shureefees, Appendix, No. 242.
† Sirajiyyah, Appendix, No. 243.
sister by strength of propinquity. But *Moohummad* would divide the property in the roots, that is, the brother and sisters, having respect to the sides and number of the branches. Thus, the property would be originally divisible into six parts, by reason of the occurrence of a sixth, which is the share of the half-sister by the mother; the full sister having two branches is accounted the same as two full-sisters, whose share being two-thirds of the property, four parts would be allotted to her, and the remaining sixth pass to the half-brother by the father, as residuary, when his sister would also participate with him; but she has two branches in the present case, and her portion would be accordingly raised to an equality with her brother's, and the sixth be divided between them in moieties; when the case would be raised to twelve. The single sixth of the half-brother and sister by the father would thus become two-twelfths, one of which would be allotted to each. But it will be found, that the twelfth of the sister must again be divided between two persons, namely, her grand-daughters, and the case must be further raised to twenty-four, or four times the original number of parcels into which it was to be arranged. The one sixth of the half-sister by the mother, which passes to her grand-daughter, will thus become four twenty-fourths; the four parts of the full-sister will become sixteen twenty-fourths, and pass to her grand-daughters, who will also have two twenty-fourths as the descendants of the half-sister by the father; while
the remaining two will pass to the grandson of the half-brother by the father*.

§ Fourth class of distant kindred.

The fourth class of the distant kindred are the paternal aunts of the deceased, his paternal uncles by the mother, that is, the half brothers of his father by the same mother, and his maternal uncles and aunts without distinction†. The descendants of this class being treated of in a separate section, there is no room here for preference by proximity, as all the claimants must be equidistant from the deceased. When they all happen to be related to him by the same side, as paternal aunts, and paternal uncles who were related to his father by the mother only, or maternal uncles and aunts, preference is given to strength of propinquity, that is, the person related by both parents is preferred, whether male or female, to one connected by the father only, and the latter is preferred to one connected only through the mother. When there are male and female claimants, and all upon a footing of equality as to strength of propinquity, all being related by both parents, or by father only, or mother only, the portion of the male is double that of the female, according to the general rule. When the claimants are of different sides, some being related by the father and some by the mother, there is no longer any room

* Shureefee, Appendix, No. 244.
† Ibid, Appendix, No. 245.
for preference according to strength of propinquity, two-thirds of the property being allotted to the relatives by the father, and one-third to those by the mother, and divided among them respectively in the same way as if they were all of the same side*.

§ Children of the fourth class.

The succession of the children of the fourth class of distant kindred is regulated in a great measure in the same way as the succession of the distant kindred of the first class. That is, the first entitled to the inheritance is the nearest to the deceased, on whatever side related; and among equidistant relatives, provided they are all on the same side, the preference is determined by strength of propinquity. When the claimants are not only equidistant, but also on a footing of equality as to the strength of their propinquity, the child of a residuary is preferred to one who is not so. Thus, where the claimants are the daughter of a paternal uncle, and the son of a paternal aunt, both uncle and aunt being of the full-blood to the father of the deceased, the former will take the whole estate, as being the offspring of a residuary. But if the aunt had been of the full-blood, and the uncle only of the half-blood, the son of the former would be preferred, by reason of the strength of propinquity, according to the most probable traditions, and agreeably to the analogy of a maternal aunt by the father, who though

* Sirajiyyah, Appendix, No. 246.
the child of a false grand-father, who is only a distant kinsman, is preferred to the maternal aunt by the mother, though she is the child of the maternal grandmother, who is a sharer. Some, however, maintain, that the daughter of the paternal uncle by the father, ought to have the preference in the supposed case, by reason of her being the child of a residuary*

When the claimants, though equidistant, are not related by the same side to the deceased, there is no longer any dependance on the strength of propinquity, nor the fact of one of them being the child of a residuary. This is both agreeable to the more generally received traditions, and to the analogy of the case of a paternal aunt of the full-blood, who, though the mistress of two propinquitites, and also the child of an heir on both sides, (her father being a true grand-father to the deceased, and therefore a residuary, and her mother his true grand-mother and consequently a sharer) does not exclude a maternal aunt by the father alone. No regard being had to either of the circumstances above-mentioned, two-thirds of the property pass to the relatives on the father's side, and one-third to those connected by the mother's. In distributing the portions of the former class, respect is first to be had to the strength of propinquity, and then to the offspring of residuaries. For the latter class, the rule is the same, as far as possible, but all the relatives being connected through a female, there cannot be any residuary among them:

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* Sirajiyah, Appendix, No. 247.
According to *Abou Yosuf*, the portion of each class is to be divided among the individuals composing it, with reference to their own sex and number; while in the opinion of *Moohummun*, the number of the branches is to be taken into account at the first stage where the difference of sex appears, as explained for the distant kindred of the first class*. Thus, let us suppose that the deceased has left four grand-sons and four grand-daughters of paternal and maternal uncles and aunts of the half blood, that is, related to his father or mother through one parent only, according to the following scheme:

p. a. by f. p. a. by f. p. u. by f. m. a. by f. m. a. by m. m. u. by f. daughter, son, daughter, daughter, son, 2 sons, 2 daughters, 2 daughters, 2 sons.

Here the property is first to be divided into three parts, whereof two parts go to the relatives by the side of the father, and one part to those by the side of the mother. Among the former the two daughters are equivalent to four, according to *Abou Yosuf*; that is, to two on each side: but four daughters being equivalent to two sons, and there being also two other sons, the whole of the two-thirds which fall to the relatives by the father, will be divisible into four parts, which obviously cannot be done without a fraction. There is however a common measure of the number of parcels (two), and the individuals among whom they are to be distributed (four), and the former will accordingly be raised to

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* Sirajiyyah, Appendix, No. 248.
four sixths, in the manner so often explained. In the same way, the two sons on the side of the mother, being doubly related, are equivalent to four, and there being two daughters, who are equivalent to one son, the number of claimants among whom the remaining third is to be divided, is five. Here there is no common measure of the parcel and parties entitled to it, and the number of the latter must accordingly be preserved entire. On comparing five with two (the measure of the relatives by the father), as directed in chapter seventh, we find that there is no common divisor of the numbers, which must accordingly be multiplied together; and the product (ten) being multiplied by three, the original divisor of the case, the whole number of the parcels will be raised to thirty, whereof twenty will pass to the claimants on the father’s side, or ten to the two sons, and ten to the two daughters; and the remaining ten to the claimants by the mother’s side, or eight to the sons and two to the daughters*.

According to Moohummad, I shall content myself with stating the general result of his principles in the above case, without following their application at each step, which would be fatiguing the reader’s attention unnecessarily, after the full explanation that has been given of them in treating of the distant kindred of the first class. According to Moohummad, the property ought to

* Shureeseea, Appendix, No. 249.
be divided into thirty-six parcels; of these, two-thirds or twenty-four parcels would pass to the relatives by the father's side; of whom the two daughters would receive nine each, (that is, six in virtue of their descent from the paternal uncle by the father, and three as descendants from the paternal aunt by the father;) and each of the two sons three parcels. The relatives by the side of the mother would take the other third or remaining twelve parcels, whereof the two sons would have each five parcels, (that is, three by virtue of their descent from the maternal uncle by the father, and two as descendants of the maternal aunt by the father;) while only two parcels would be left for the daughters, or one to each. On reckoning up all the shares, it will be found that they amount to thirty-six exactly. Thus, 

9+9+3+3=24; 5+5+1+1=12; and 24+12=36*.

If there be none of the persons mentioned in the preceding section in existence, the estate will revert to the maternal uncles and aunts of the deceased's parents, the paternal uncles of his mother, and such of the paternal uncles of his father as were related to him by the mother only. In default of all these, it passes to their children. Failing whom, it will revert to the same description of uncles and aunts of the parents of the deceased's parents; and then to their children. And so on through the more remote branches, without any limit; the succession...
being regulated in the same way as that of the distant kindred of the fourth class and their children.

* The authority for the last paragraph was omitted at the proper place in the Appendix, and has been added at the end as No. 286. The distant kindred are of small importance compared to the residuaries, and it is worthy of remark, that the author of the Sirajuddin, after observing that the estate will pass, on failure of the uncles and aunts of the deceased and their children, to the uncles and aunts of his parents and their children, subjoins the words "as in the case of residuaries." Here we have his own authority that he did not mean to restrict his definition of the term "residuaries" to the descendants of the nearest or immediate grandfather, as has been apparently supposed by his learned translator. And it may be fairly inferred from the generality of that definition, that there is in truth no limit whatever to the residuaries in the collateral any more than in the direct line; an inference which is confirmed by the analogy of the distant kindred; for whose unlimited succession in the former as well as in the latter line, we have the express authority of the Shureefeeea.
CHAPTER XII.

Of Posthumous Children, Missing Persons, Captives, and persons perishing by a common accident.

The author of the Sirajiyyah has annexed to his chapter on the Distant Kindred, which is the last in his treatise, a few supplementary sections on subjects closely connected with the Law of Inheritance, if they do not strictly form a part of it. The first of these sections, which treats of hermaphrodites, I shall pass over entirely, referring the reader who is curious respecting the notions entertained by Moohummudan lawyers on the obscure question of doubtful sex, to the third volume of Sir William Jones’s Works, quarto edition, and Mr. Hamilton’s translation of the Hidaya, vol. iv. p. 559, where the subject is treated at all the length which it probably deserves. The matter of another of the sections has been introduced, with some additional observations drawn from other sources, in the second chapter under the head of the third impediment to inheritance. And of the remaining sections I propose to give some account in this place. The most important, which treats of posthumous children, I shall consider at some length. For the others a shorter notice will be sufficient.
§ Of Posthumous Children.

Different nations have entertained different opinions respecting the longest and shortest periods of gestation in the human species, though all mankind are agreed in fixing the ordinary term at about nine calendar months. The instances of any considerable protraction of this period are probably very rare; but a slight excess is by no means unfrequent. And we know that the usual period has been anticipated in many well authenticated cases by so long as two months. There seems to be nothing, therefore, to warrant us in assigning any positive limit beyond which gestation can never be protracted, nor to enable us to determine the shortest possible time required by nature for the formation of a perfect fetus. There is at the same time an obvious convenience in possessing a rule of law for determining how far questions of this kind may be entertained; and such a rule is accordingly found in the codes of several nations. By the Roman law, ten and six months respectively were prescribed for the maximum and minimum of gestation; and both the law of Scotland and the Code Napoleon have adopted its provisions in this respect. The law of England is perhaps not fixed on the subject, but the decisions of the courts would probably be regulated in a doubtful case, pretty much, though not strictly, by the same rule. With respect to the shortest period of gestation, the Moomhummadan law is the same as the Roman, and upon
this point the doctors of all sects seem to be agreed*. But there is less unanimity regarding the longest period; though the notions entertained by all on the subject will probably excite the smile of an European physiologist. They form, however, a part of the Moollummadan code, and cannot well be entirely disregarded by our courts of justice, without altering the law which they are bound to administer in some cases, and assuming in so far the functions of the legislature.

According to Shafei, the period of gestation may be extended to four years†; and two cases, apparently well authenticated, of persons who are said to have remained so long in their mothers’ wombs are cited in support of his opinion. With respect to these cases the author of the Shureefea pertinently observes, that the parties could neither have known the fact themselves, nor have well been informed of it by others, since none but God himself can tell what takes place in the womb. Moreover, the protraction might have been occasioned by an unusual rigidity of the mouth of the uterus, induced by disease, and so rare an occurrence cannot be drawn into a precedent‡. The opinion of Aboo Huneefa seems to rest on less questionable grounds. He assigned two years as the longest period of gestation, on the authority of Ayesha, one of the Prophet’s

* Sirrajyyah and Shureefea, Appendix; No. 251.
† Appendix, No. 251.
‡ Shureefea, Appendix, No. 252.
widows, who expressly declared, that "a child re-
"mains no longer than two years in the womb of 
"its mother, even so much as the turn of a wheel?" 
And this she delivered, not as her own opinion, but 
as a saying of the Prophet himself. It is therefore en-
titled to the same implicit respect as any other of 
the traditions, and is accordingly so observed by all 
the sect of Aboo Huneefa*.

Disbelieving entirely in all reports of extraordi-
nary protraction, we may be apt to suppose that, 
notwithstanding the latitude allowed by the Moo-
hummudan law, the only difference which can exist 
between its practice and that of European nations 
is, that questions of pregnancy may be entertained in 
the former as worthy of investigation, which would 
be entirely rejected in the latter. If our notions 
on the subject be correct, and the investigation be 
fairly conducted, the practical result ought to be 
nearly the same. The issue of an investigation, 
however, must depend in some degree on the spirit 
in which it is pursued; and we should not be sur-
prized if a much less degree of evidence would satisfy 
a Moohummudan lawyer upon a point of this nature; 
than would be required to command the belief of an 
English jury. There are still facts, such as the 
external symptoms of pregnancy, which cannot be 
entirely disregarded; and it can hardly be supposed, 
if a woman should fail to exhibit any of these signs

Shureseeea, Appendix, No. 253.
at the usual time, reckoning from her husband's death, that any child which she might ultimately produce within two years from that period would still be pronounced legitimate even by a Moohummedan lawyer. His law allows that the usual period of gestation may in some cases be protracted so long; but it does not allow, so far as I have been able to discover, that pregnancy may possibly exist without any of the symptoms by which it is usually distinguished. There would thus be still a fact in most cases to be accounted for, as contrary to Moohummedan experience as to our own. It seems therefore probable, that the only instances where any real difficulty can occur, are those rare cases of disease which occasionally perplex even the most skilful of the medical faculty in Europe.

The law has so strong an inclination to favor the paternity of children, that there is a marked distinction, in the application of the rules respecting pregnancy to the subject of inheritance, between cases where the paternity of the fetus is involved, and those where the question is merely whether it shall be entitled to a portion of the succession or not. Thus, if the pregnant woman be the widow of the person whose succession is in dispute, the child shall inherit, if born within two years from such person's decease, unless the woman has acknowledged the completion of her iddut, which would be tantamount to an admission that she was either not pregnant at the death of her husband, or
had been intermediately delivered of another child. While if she were the widow of a relative of the deceased, as of his father or son for instance, it is necessary that she should be delivered within six months from his death, in order that her child may participate in his inheritance. The reason assigned by the commentator for this distinction, is the necessity of finding a legal descent for the infant in the first instance; while in the second, his paternity being already established, and the question reduced to one of mere inheritance, it is necessary to establish his existence in the womb at the death of the party from whom he claims to inherit, and that can be predicated with certainty only when he is born at or within the shortest period of gestation, reckoning from that event.

When a child is born alive, he acquires a vested interest, which passes to his representatives in the event of his death. If that should occur immediately after delivery, it may be a question of some difficulty to determine, whether the infant was actually born alive or not. The Moohummudan law has provided for cases of this kind, with a minuteness which is perhaps unknown to other systems of jurisprudence. If the infant exhibits any of the signs by which life is usually indicated, as a sound, sneezing, weeping, laughing, or the motion of a limb,

* See Note to page 4.
† Sirajiyyah, Appendix, No. 254.
‡ Shareefseea, Appendix, No. 255.
it is to be accounted alive*. And if it should die in the birth, the vestiture of interest will depend on the fact of the greater or smaller portion of the body being delivered before death. In cases of natural labor, where the head is presented, the breast is to be considered; that is, the infant shall inherit if the whole breast be delivered while he yet discovers signs of life; but if the feet are first delivered, the navel is to be taken into consideration, and his right of inheritance will depend on so much of his body being protruded while he is yet alive†.

According to Aboo Huneefat, of the portions of four sons, and four daughters, whichever is the greater in the particular circumstances of the case, is to be reserved for an infant in the womb, and the remainder of the property to be immediately divided among the other heirs. By one report of Moohum-mud’s opinion, the larger of the portions of three sons and of three daughters, but by another, the portion of two sons, ought to be reserved. Aboo Yoo-suf, on the other hand, according to the more generally received accounts of his sentiments, considered, that no more than the share of one son, or the share of one daughter, can be properly reserved for an infant in the womb; security however being taken from the other heirs to refund in case of there proving to be more than one child. And the reasonableness of this opinion has recommended it to the

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* Shureeefea, Appendix, No. 256.
† Sirajiyah, Appendix, No. 257.
approbation of the learned, by whom it has been generally adopted, as the rule of decision.

In arranging cases of pregnancy, the property must be divided into so many parcels as will allow of all the heirs' receiving their portions without a fraction, whether the infant should prove to be male or female, and the following rule has been laid down for that purpose. First, arrange the case on either supposition; then compare the number of parcels upon one supposition with the number of parcels upon the other; and if the numbers be commensurable, divide one of them by the measure, and multiply the quotient by the other. Otherwise, multiply the whole of the one number by the whole of the other. The product in either case will be a number of parcels which can be divided among the heirs exactly, whether the infant be male or female.

This being ascertained, we are next to take the portion of each heir on the supposition of the infant's being a male, and multiply it either by the whole number of parcels required on the supposition of the infant's being a female, or by the quotient of that number when divided by the common measure if there happens to be one. We are then to proceed in the same way with the portion of each heir, on the supposition of the infant being a female. And of the products of the two operations, that which hap-

* Sirajiyyah, Appendix, No. 258.
† Sirajiyyah and Shureefee, Appendix, No. 259.
‡ Sirajiyyah and Shureefee, Appendix, No. 260.
pens to be the less, is to be surrendered to the particular heir, and the difference reserved till the birth of the infant*. Thus suppose, that the deceased has left a daughter, both parents, and a pregnant widow. If the infant be a male, the property must be divided into twenty-four parcels, by reason of the concurrence of an eighth with two-sixths. The widow’s portion will accordingly be three parcels, eight will fall to the parents, and the remaining thirteen will belong to the daughter and the unborn son. Again, on the supposition of the infant’s being a female, we should have the concurrence of two-thirds, an eighth, and two-sixths, and the number of parcels would be raised to twenty-seven; whereof eleven would be taken by the widow and parents as before, while sixteen would belong to the daughter and the unborn child. The property must accordingly be divided upon both suppositions into twenty-four and twenty-seven parcels. But of these numbers there is the common measure three, and, dividing one of them by it, and multiplying the other by the quotient, we have two hundred and sixteen for the number of parcels required to meet either supposition. Then taking the portion of each heir on the supposition of the infant being a male, and multiplying such portion by the quotient of the number of parcels on the supposition of the infant’s being a female, when divided by the common measure of the parcels on

Sirajyyah, Appendix, No. 261.
both suppositions, we have $3 \times 9 = 27$ parcels, for the share of the widow, on the first supposition; and $4 \times 9 = 36$ parcels, for the share of each parent, on the same supposition. Reversing the operation for the contingency of the infant's proving to be a female; we have $3 \times 8 = 24$ parcels for the share of the widow, and $4 \times 8 = 32$ parcels for the portion of each parent. It is obvious, that the shares are larger on the last supposition; and the difference, or $27 - 24 + 2(36 - 32) = 11$ parcels, must be reserved from the portions of the widow and parents, to abide, the event of the delivery*.

The estate being originally divisible into twenty-four parcels, on the supposition of the infant's being a son, and eleven of these being absorbed by the shares of the widow and parents, there remain thirteen for the daughter and the unborn child. If with Aboo Huneefa we reserve the portions of four sons, to await the birth of the child, the daughter can receive in the mean time only a ninth part of the remaining thirteen parcels, which multiplied by nine, as in the cases of the widow and parents, will give $\frac{14}{9}$ths, as the amount immediately claimable by her†. But, according to the more reasonable opinion of Aboo Yoosuf, she would be immediately entitled to $\frac{17}{9}$ths, being one-third of the remainder; after deducting the portions of the other heirs; the other two-thirds being reserved for the infant in the womb. If the birth should be female,

* Sirajiyyah and Shareseea, Appendix, No. 262.
† Sirajiyyah, Appendix, No. 263.
whether one or more, the whole of what was reserved is to be divided among the daughters, because the very contingency has happened with respect to which the portions were reserved, the widow and both parents having received all that they were entitled to, on the supposition of the infant being female. The daughter, who was born before her father's death, having already received a certain part of her share, is entitled to no more of the reserved portion than is sufficient to put her on a footing of equality with, her posthumous sister or sisters. If the widow be delivered of a son or sons, the amounts deducted from the portions of the sharers must be restored to them, and the remainder will then be divided among the children, according to the general rule of a double share to the male, whatever the daughter may have already received being deducted from her share. If the infant be still-born, the portions reserved from the shares of the widow and parents must in like manner be restored, and the amount received by the daughter must be made up to a full half of the whole estate, the surplus being the property of the father as the residuary*.

It seems hardly necessary to observe, that an heir, whose portion cannot be affected by any condition of the infant, is entitled to have the whole of it immediately surrendered to him; and that, on the other hand, where the heir would be entirely excluded in one condition of the infant, no part.

* Sirajiyyah and Shureefea, Appendix, No. 264.
of his share can be delivered to him until its birth. Thus, where the heirs are a grand-mother and a pregnant widow, the former is at once entitled to her sixth, which is subject neither to increase nor diminution, whether the child be male or female, or be born alive or dead*. And where the heirs are a pregnant widow, a brother, and a paternal uncle, neither of the two last is entitled to anything until the birth of the child, because they would be wholly excluded if it should prove to be a son†.

§ Of Missing Persons.

A person is said to be missing when he is absent, and there is no certain intelligence whether he be alive or dead‡. In these circumstances, he is not to be considered dead so long as there are any of his contemporaries alive. This is agreeable to the general current of the traditions§; though according to one report, Aboo Huneefa extended the time to a hundred and twenty years, reckoning from the birth of the person missing, while Moohummud fixed it at a hundred and ten years, and Aboo Yoosuf at a hundred and five years, reckoning from the same period‖. But these reports are not found in books of good authority, and seem to be generally rejected¶. There is however another opinion, which

* Shurersefa, Appendix, No. 265.
† Ibid, Appendix, No 266.
‡ Ibid, Appendix, No 267.
§ Shajiyah, Appendix, No. 268.
‖ Ibid, Appendix, No. 269.
¶ Shurersefa Appendix, No. 270.
assigns ninety years, as being usually the extreme limit of human existence in the present age of the world; and, according to the Imam Timurtashee, judicial decisions are given in conformity to this opinion*. But the author of the Hidayah says, that it is more agreeable to the analogy of the law, that there should be no fixed period, though it is more convenient to limit it to ninety years†. The writer quoted in the Futawa Alumgeereee declares, with the Imam Timurtashee, and perhaps on his sole authority, that the Futwa is according to this opinion; but he remarks, that the most general tradition is in favor of the other, which refers to the missing person's contemporaries‡. There is some difference as to the persons who shall be considered his contemporaries for this purpose; but by the most correct opinion they are contemporaries in his city. It may be remarked, that this is according to the Imam Timurtashee, on whose authority, as already observed, the exact period of ninety years has been assumed for determining the death of the missing person§. So that much reliance, it would appear, cannot be placed upon any of the opinions cited; and if a case of the kind were to occur in our courts, the judges would perhaps consider themselves at liberty to exercise their own discretion, taking into

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* Sirajiyyah and Shureefeeea, Appendix, No. 271.
† Hidayah, Appendix, 272.
‡ Futawa Alumgeereee, Appendix, No. 273.
§ Shureefeeea, Appendix, No. 274.
consideration the health and age of the party missing, and all other circumstances which might have the effect of shortening or prolonging his days. Some of the followers of Aboo Huneefa have asserted the right of the Imam to exercise his discretion in each particular case; a course which is farther recommended by the practice of Shafei*.

Rule. A missing person is considered alive with respect to his own estate, so that no one can inherit from him, but dead as to the property of others, so that he does not inherit from any one†. Any share in a succession which may open to him before a judicial declaration of his death, is to be reserved to await the possibility of his return‡. Should he return, it is of course to be transferred to him, and all his other property restored, which it is the duty of the judge to place in the meantime under the custody of a proper officer. If he should never return, the principle of accounting him alive as to his own property, but dead as to that of others, comes into operation; for it is only such of his heirs as are alive at the time of the Judicial declaration of his death, who are entitled to participate in his estate, while the portions reserved for him from the estates of others revert to their other heirs.§.

* Sirajiyah and Shreeeefa, Appendix, No. 275.
† Ibid, Appendix, No. 276.
‡ Sirajiyah, Appendix, No. 277.
§ Sirajiyah, Appendix, No. 278.
An estate, where one of the heirs is missing, is to be arranged first on the supposition, that he is alive, and will return to claim his share, and then upon the supposition of his being dead. The rest of the operation is the same as has been already explained under the head of pregnancy*. Thus, suppose that the deceased has left a husband and two full-sisters, all of whom are present, claiming their shares, and a full-brother, who is missing. Then, upon the supposition of the brother being dead, the husband and sisters being the sole heirs, the share of the former would be a half and of the latter two-thirds, the extractor of the case being six originally, but increased to seven. On the supposition of his being alive, while the husband’s share would still remain the same or a half, the sisters would have only a fourth; for on that supposition the estate would be originally divided into two parts, the husband taking one, and the brother with his sisters the other; but the share of the brother being equivalent to that of two sisters, the whole of the estate would be divided into eight parts, whereof the husband’s would be four, the brother’s two, and the sisters’ one each. In these circumstances, it is obviously for the advantage of the sisters that their missing brother should prove to be dead, while it is for the benefit of the husband that he should be alive, and accordingly no more than one-fourth of the estate can be immediately surrendered to the sis-

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* Sirajiyah, Appendix, No. 279.
ters, and only three-sevenths to the husband, the remainder being reserved to abide the event of the missing person's return, or the judicial declaration of his death. To resolve the case, the estate must be arranged into fifty-six parcels, or the product of the parcels, on the supposition of the missing person's being alive, which was shewn to be eight, multiplied by the number of parcels on the supposition of his death, which is seven. Eight and seven being incommensurable, the number of parcels cannot be reduced by any of the processes so often alluded to. The husband's share on the supposition of the missing person's being alive (four parcels) being multiplied by the number of parcels on the supposition of death, or seven, the product is twenty-eight. In like manner his share on the supposition of death (three) being multiplied by the number of parcels on the supposition of life (eight), the product is twenty-four; which being the smaller, is surrendered to him, and the difference between the products, or four parcels, must be reserved to await the return or death of the missing person. The shares of the sisters being subjected to the same operation, the results are fourteen parcels for the supposition of life, and thirty-two parcels for that of death; and the difference (or eighteen parcels) must be reserved. The whole of what is immediately payable to the present heirs being thus $24 + 14 = 38$ parcels, the amount to be reserved for the missing son is eighteen out of the fifty-six. If he be alive, four of these are to be restored to the
husband, to make up twenty-eight parcels, the half of fifty-six, and the remaining fourteen added to the fourteen already paid to the sisters, make up the other half; but as the brother is entitled to a double portion, the whole fourteen are surrendered to him. If he should prove to be dead, the whole of the reserved eighteen parcels are to be delivered to the sisters, to complete with what they have already received (14 + 18 = 32) thirty-two parcels, which it will be found are four-sevenths of fifty-six.

§ Of Captives.

A captive is with respect to inheritance on the same footing as all Moohummodans, so long as he abides in the faith. If he abandons the faith, his condition is like that of other apostates. And if it be unknown whether he has apostatized or not, or be alive or dead, the rules respecting him are the same as those applicable to missing persons†.

Should the heirs of a captive lay claim to his property, on the ground of his apostasy, they must prove the fact by two credible Moohummudan male witnesses. And if they are able to do so, it is incumbent on the Kazee to decree a division of the captive's property among them, the apostasy being in these circumstances a civil death‡.

* Shureefea, Appendix, No. 280.
† Strajiyyah, Appendix, No. 281.
‡ Shureefea, Appendix, No. 282.
§ Of Persons perishing by a common accident.

When relatives perish together, as by the sinking of a boat, the fall of a house, or in a common conflagration, and the exact times of their respective deaths cannot be ascertained, it is to be presumed, that they all died at the same moment, and the property of each shall pass to his living heirs, without any portion of it vesting in his companions in misfortune*. According to one account, Alee and Ibn Musood were of opinion, that the relatives ought all to be considered as having succeeded to the property possessed by each other at the time of the accident, but not to the portion derived by inheritance from a fellow-sufferer†. The reason of the exception is obvious, as without it a man might in some circumstances be made heir to himself.

To illustrate these different opinions, let us suppose, that two brothers perish together, each leaving a wife, a daughter and an emancipator, as his heirs, and an estate to the value of ninety deenars. According to the more general opinion, the mothers would each take a sixth, or fifteen deenars, the daughters a half, or forty-five deenars, and the emancipators the remainder, or each thirty deenars. According to the other opinion, the mothers and daughters would receive fifteen and forty-five deenars respective-

* Sirajiyyah and Shureefeaa, Appendix, No. 233.
† Sirajiyyah, Appendix, No. 234.
ly as before; but the remaining thirty of each estate would be presumed to have vested in the other brother, and would accordingly pass to his heirs. Thus, the remainder of the elder brother's property would be divided among the mother, daughter, and emancipator of the younger; giving a sixth, or five deenars to his mother, a half or fifteen deenars to his daughters, and the surplus or ten to his emancipator. The same thing would take place with respect to the remainder of the younger brother's estate, which would be divided in like manner among the mother, daughter, and emancipator of the elder. The mothers of each brother would thus get in the whole twenty deenars, the daughters sixty, and the emancipators no more than ten*.

Both opinions are supported by ingenious reasons, and the second is further recommended by its giving a larger portion of the estates to the nearer relatives; but there is only one tradition in favour of it, and the other is the more approved, and appears to be generally adopted by the followers of Aboo Huncefa†.

* Shureefseea, Appendix, No. 285.
† Appendix, Nos. 283 and 285.
في أعبام الميت نقل ذلك إلى أعبام أبيه ثم إلى أعبام جده فكذا الحال في معنى العصوبة.
سراج وشريف
صفحة 177
(118)

20 - ثم بعثر هذا الحكم الذي ذكرناه مفصلاً في عمومه الميت وحؤلته وفي أولادهم إلى جبة عمومه أبوه وخولتهم إلى أولادهم ثم ينقل إلى جبة عمومة أبوه أبوه وخولتهم ثم إلى أولادهم كمافي العصابات يعني إذا لم توجد عمومة الميت وحؤلته وأولادهم انتقل حكمهم المذكورالي عم أبي الميت لأم وعمته ووالده وخالته ووالده العم الميت وعمتها وخالته فإن أنفرد واحد منهم أخذ المال كله لعده المزاحم وإن اجتمعوا هددحيز تربة فللفوق منهم وأي ذكراء كان الأقوى أوائلي وان استوت فرابتهم فلذكر كمثل حظ الإثنيين وأن اختلف حيز ترابتهم فلقرابة الإب الثالثاً وقرابة الإم الثالث إلى أخر مامر هناك فإن لم يوجد هؤلاء كان حكم أولادهم حكم أولاد الصنف الرابع فان لم يوجد هؤلاء انتقل الحكم إلى عموم أبي الميت وحؤلتهم ثم إلى أولادهم وهكذا إلى مالاً ينتمي وشام يقول في كمافي العصابات إلى أن توريث ذو الأرحام باعتبار معني العصوبة كماسلي فيعتبر تحقيق العمونة وليعرف في تحقيق العمونة الحكم.
وإذا فرق إخواني أعبر واصغر وخلفي كل منهما إما وينتا ومولى وترك كل منهما تسعين ديناراً فننا تقسِّم تركه كجل واحد منهما فيعطي لأم كل واحد منهما سدس تركه وهو خمسة عشر وابنت كل منهما النصف وهو خمسة وأربعون وملولة مابقي وهو ثلثون عند علي ربيب مسعود رضي الله عنهما في討تي الروابطين بينهما يحكم بمموت الأكبر ولا تقسِّم تركه فلا مدة السدس وهو خمسة عشر ولا بنة النصف وهو خمسة وأربعون وللصغر مابقي وهو ثلثون ثم يحكم بمموت الأصغر فتقسِّم تركه كذلك فقدي بي من تركه كل واحد منهما نصفه وهو مورث كل منهما من صاحبه فلالام من ذلك الباقى السدس وهو خمسة ولا بنة كل منهما نصفه وهو خمسة عشر والباقي للمولى لا إن كلا منهما لا يرث من صاحبه ماورث منه فقد اجتمع لأم كل منهما مشرون ولبنه ستون وملولة عشرة شاهيرة رفيدة صفه ٠٥٤
 ردته ولا حيوله ولا موتته حكمه حكم الحقوقي

سراجية

۱۲۸۴ فان ادعا ورتهما ارتدى دار الحرب لا تقبل في ذلك
الإشادة مسالمين مدنيين فادا شهدحا حكم القاضي
بوقع الفرقة بينه وبين اسرأله وقسم ماله بين ورثهما لَا ين
ميت حكم عند قضاء القاضي شريفية صفه م۲۰۰

فصل في الغرقي والحركي والهل يمي

۱۲۸۳ إذا ماتت جماعة بينهم قربة ولا بد رئا لهم ماتاو لا كا
ذا غرقو في السفينة معا ووقعوا النار فامة وسقط عليهم
جدا واسقف بيت وقتلوا في معركة ولم يعلمون التقدم
والناخر في موتهم جعلوا كامتهم ماتautoplay فعال كل واحد منهم
لورثهما الأحياء ولا يبرت بعض هؤلاء الاموات من بعض هذة
هو المختار سراجية وشريفية صفه م۲۰۰

۱۲۸۵ قال ملا وابين مسعود رضي الله عنهما في احدي
الروايتين منها يرث بعض من بعض الامينا ورث
كل واحد منهم من صاحبه سراجية صفه م۲۰۰
وكان لهما من مستقبل الوفات أربعة فازًا ضربت في الثمانية صار الحاصل إثنتين وثلثين فصرف اليهما اثنان علوية وهو أربعة شهر وهو بر روستة وخمسين فلكولاً واحدة منهما سبعة وتوقف من نصيبهم ثمانية عشر فجميع ماصرف إلى الزوج والأخرين ثمانية وثلثون والباقي من سنة والخمسين وحوت ثمانية عشر موقوف فإن ظهران الفقد حي تدفع إلى الزوج الرربعة المؤقتة ليتم له نصف المال وهو ثم ين ثمانية وعشرون يكون الباقى وهو أربعة عشر للأخين حتى يكون النصف الآخر بين الأخ والأخرين لذك كرمل حظ الإثنين وان ظه هن اميت تدفع إلى الأخرين الثمانية عشرة المؤقتة من نصيبهما حتى تتم لهما أربعة إسباع المال وهي إثنان وثلاثين واما الزوج فقد أخذ نصيبه كملة وهو أربعة وعشرون

فصل في الأسبر

حكم الأسبر كحكم سائر المسلمين في المراه مال يفارق دينه قان فارق دينه فحكمه حكم المرتد فأن لمتعلم
على هذا التقدير أنان الواحد للرجل وواحد للأخ مع
الأخين فلا يستقيم عليهم وهم كاربم أخوات تضرب
الاربع في أصل المسألة فبلغ ثمانية أربعة منها للرجل واثنان
للأخ ولكن آخران للأخين لكل واحدة واحد فموم
المفقود خير للأخين من حيوته وهو ظاهر وحبوته خير
للرجل إذ له حينما نصف من المال بلاعول تعتبر حيوة
المفقود في حق الأخين فلا يصرف اليهما الاربع المال
ويتعبرموته في حق الرجل فلا يعطي الاربعهما اسباع المال
وبوقع الباقى وهذه المسألة تسمى من سنة وخمسين
لا أن مسألة الحياة من نائمة ومسألة الوايات من سبعة
وبينهما مباني فتضرب احدهما في الآخرية فيبلغ سنة
وخمسين مكان للرجل من مسألة الحياة أربعة فإذا
ضربت في مسألة الوايات وهي سبعة حصلت ثمانية
وعشرون وكانت له من مسألة الموت ثلثة فاذدا ضربت
في مسألة الحياة وهي ثمانية بلغت أربعة وعشرين فتتبطي
للرجل أربعة وعشرون إلا أنها تل ألحاصلين وهو النصف
العائل وتقف من نصبه أربعة وكان للأخين من مسألة
الحياة اثنان فاذدا ضربنا في السبعة حصلت أربعة عشر
المنفوق حي في ماله حتي لا يرث منه أحد وربة في مال
غيره حتي ليست من أحد لثبوت حيوته باستحباب المال
وهو معنبر في ابتداء ما كان عليه ما كان دون إثبات
ومال يكن لهذا لا يثبت استحقاق ورثته ماله * سراحية
وشريفية صفحة 191
وموقف الحكم في حق غيره حتي يوقف نفسه
من مال مورته كافى الامكاني * سراحية صفحة 198
فاذامضت المدة فدالله لوراثته الموجودين عند الحكم
بموت وما كان موقفه لجهة يرثه وارث مورته الذي
وقف من ماله * سراحية صفحة 198
الاصل في تصحيح مسائل المنفوق حي تصحيح
على تقدير حيوته ثم تصحيح على تقدر وفاته وباقي العمل
ماذ كن في العمل * سراحية صفحة 198
فاذان تركزت مثل الزوج حاضرا واختين لا ب وام
حاضرين واخالاب وام مقوقعل على تقدير كون المنفوق
ميتا يكون للزوج النصف ولاخنين الثلاثة فالميئة من
ستة لكنها تكفي على سعة وعلي تقدير كونه جيل الزوج
النصف غير ائل ولاخنين الربع لان اصل المئة
بمروة اعنتت امرأته عدة الوفاة من ذلك الوقت * الها... ص11
الرقم 173 لايرق بينه وبين امرأته وحكم بموته بقضي تسعين سنة وعليه الفتوى وفي ظاهر الرواية يقدر بموت اقرانه فاذ الميقات أحد من اقرانه حيا حكم بموتته ويعتبرموت اقرانه في اهل بلده كذالك في الكاف والخليفة يفوز الى رأى الإمام حكذا في النبيين * قناعي علماً كبيرة في الجل... ص95
فقيل المعبر اقرانه في بلده وقيل جميع البلدان والأولين الاصل كما ذكر في فرائض الإمام الشريعي رجح أن يعتبر اقرانه في بلده لا ان الا عمار مستنفرت باختلاف التأليف والبلدان وايضا اعتبار جميع الاقران فيه حرف أعظم * شريفين... ص97
وقال بعضهم مال المفصول موقوف الى اجتهاد الإمام في مروته وهو مذهب الشافعي رجح فان قال أذا مفتى مدة يقضى القاضي بأن مثله لا يعيش أكثر من هذا المدة حكم بموته ويقسم ماله على ورثه الموجودين حال الحكم به * سراجية وشريفين... ص97
ويوقف ماله حتى تصم موتة أو يمضى عليه مدة واختلفت الروايات في تلك المدة ففي ظاهر الرواية أنه ذا النم يطرق أحد من آخرين حكم بموتته سراجية صفحه 197 وروى الحسن ابن زياد عن أبي حنيفة رح أن تلك المدة مائة وعشرون سنة من يوم ولدته وقال صمد رح مائة وعشرين سنة وقال أبو يوسف رح مائة وخمس سنين سراجية صفحه 197 وлибоان الروايتين لم توجد في الكتب المعتبرة

شرفي

وقال بعضهم تسعون سنة لان الزيادة عليها في زمن ناغية الندرة فلا تناط بها الا حكم الشرعية التي مدارها على الأغلب قال الإمام الترمثاشي رح عليه الفقراء سراجية وشرفي صفحه 197 وذائتم لماله وعشرون سنة من يوم ولدكما بموتته قال ملي رض وهذه رواية الحسن عن أبي حنيفة رح وفي ظاهر المذهب يقدر بموت الآخرين ولكن في المروي عن أبي يوسف رح مائة سنة وقدرة بعضهم بنسرين والأقين إن لا يقد بسرين والارتقى إن يقدر بنسرين وإذا حكمو
ما كان موقنو من نصيبهم فما يقت يتقي يقسم بين الأولاد
وان ولدت ميتافيطل للمرأة والأبوين ما كان موقنو
من نصيبهم ولبنت إلى تمام النصف وهو خمسة ونسعو
سهما و الباقين للاب وهو نسعة اسمهم لانه عصبة

سراج

وعلما ان الميت اذا ترك من لا يتغير فرضه بالحمل
فانه يعطي فرضه كما إذا ترك جدة وامرأة حاملا
يعطي الجدة السدس وكذا إذا ترك ام رأة حاملا وابنا
فللمرأة الشمس * شريفية

وإن الوارث اذا كان مسن يسقط في احدى حالتي
الحمل فانه لا يعطي شيتالان اصل استحقاقه مشكوك ولا
نورتين مع الشك كما إذا ترك ام رأة حاملا وان تولى
فلاشي للاخ وللمال لا جواز يكون الحلم ابناها فرحا ابناها
فلما هم في بغير فرضه من الورثة * شريفية

فصل في المفقود

وهو الغائب الذي انقطع خبره ولا يدري حبائه
ولا موقنه * شريفية

صفحة 191

صفحة 191

صفحة 191

صفحة 191

صفحة 191

صفحة 191

صفحة 191
وهوثمانيه صفاربعة وعشرين ودلك واحدми العيبان
وثلاثون اثنان سهام كل منهما من مسألة الأنوثة أربعة أيضا
فاذ اضررناها في وقت مسألة الذكورة وهوثمانيه صفارتبين
وثلاثين قتعطي للمرأة من ماليتين وستة عشرة أربعة وعشرون
لأنها اقل نصيبها على تقديري ذكرية الحمل والانوثة
وتوقف من نصيبها ثلاثة اسم وهى الفضل بين النصيبين إلى
ان تنكشف حال الحمل وتوقف من نصيب كل واحد من
الابنين اربعة اسم، ام يعطي من المبلغ المذكور كل منهما
اقل النصيبين وهو اثنان وثلاثون وتسعة ويوافق الفضل الذي
بينهما قد جعل الحمل في حق الزوجة والإبوبين اثنى
سراحية وشرفي

وتطغي للبنات ثلاثة عشرة اسم لان الموتوف في حقها
نصيب اربعة بنين عندامى حنيفة رح واذا كان البنون
اربعة تنصيبها اسم واربعة انساع سهم اربعة وعشرين
مضروب في تسعة فصار تثلثة عشرة نما فهي اها
سراحية

فإن ولدت بنتا واحدة واكثرت جميع الموتوف للبنات
وإن ولدت ابنا واحدا واكثر فيعطي للمرأة والإبوبين
السدس وهو رابعة واللبنت مع الحمل الذكري الباقي وهو
ثلث عشرة المستلثة من سبع وعشرين على تقد يرانه إنّه
اجتمع فيها على هذا التقدير خمسمائة وسبعون وثلاثة فهنا
منبرة وتعول من أربعة وعشرين إلى سبع وعشرين
فالأبوين ثمانية و للمرأة ثلثة و لللبنت مع الحملك الالثي
ستة وعشرتين عددي تصبح المستلتين أعني أربعة
وسبعين وعشرين ومعه وبين توافق بالثلث إنّه مخرجه
وهولئك يعد هما يعدما أنا أضرب وفق إحدهما أي ثلثه وهو
ثماني من الأول و تسعة من الثاني في جميع الاعمار
الحاصل ما يربو من ستة وعشرة وما منها تصبح المستلثة إذا
تقد يراك رتة للمرأة سبع وعشرين و لكل واحد من الأبوين ستة
وثلاثون و ذلك لأن سهام المرأة من مستلثة الذكرية
عني أربعة وعشرين ثلثة كما أعرفت فإنا ضربت في وفق
مستلثة النونة وهي تسعة بلغ سبع وعشرين و سهام كل
من الأبوين من مستلثة الذكرية أربعة فإنا ضربناها
في ذلك الوفرة بلغ ستة وثلاثين و على تقد يراك رتة للمرأة
أربعة وعشرين لأن سهامهما من مستلثة النونة يعني سبعة
و عشرين ثلثة أيضاً فإنا ضربنا في وفق مستلثة الذكرية
التم في تصحيح مسائل العمل أن تصحيح المسئلة على
تقدر براعنة اعني على تقديران العمل ذكر وعلي تقدير

لا يśni ثم تنظرين تصحيح المسئلة فإن توافقت الجزء
فاضرب ونق اسمت بها في جميع الآخرون تبا ينذا فاضرب
كل احدهما في جميع الآخرين فا لحاصل تصحيح المسئلة

سراجية وشريفية

فتم ضرب نصيب من كان له شيء من مسألة ذكره في مسألة

البستة على تقدير البابين وفي وفقا على تقدير التوافق

وأضرب أيضا نصيب من كان له شيء من مسألة انتزته
في مسألة ذكره وفي وفقا على دينك التقديرين

سراجية وشريفية

فتم النظرفي الحاصلين من الضرب أيهما أفل يعطى
لذلك الوارث والفاضل الذي بينهما موقوف من نصيب
ذللك الوارث * سراجية

كونك إذا ترك بنتا وابوين وأمرت حال المسئلة من ربعه ربة
على تقديران العمل ذكر لانه اجتمع فيها حينذن أمن وسدبان
وباقي فللوجهين منها وعونه وكل واحد من الابين
الحمل من غيره فنسبه ثابت من ذلك الغير فلا ضرورة
هناً لاعتبار الكران، وفات بل نجيب الافص الرأي على
ما هو أقل مدة الحمل وماد ونه حتى يبقى يبقى بوجود
حال الموت * شريفية صفحه 191
ورطب معرفة حيوة الحمل وقت الولادة أن يوجد منه
ما يعلم به الحيوة * صوصت أو عناص أو مكان أو ضحك
وتربى عضو * شريفية صفحه 191
فإن خرج أقل الولد مات لا يبرث وان خرج أكثر
ثم مات يبرث فإن خرج الولد مستقيما فلا يعتبر صدرة وان
خرج منكوسا فلا يعتبر صدرة * سراجية صفحه 191
وبنفي للحمل منداني حنيفة رح نصيب إربعة بين
أوا ربع بنات ابهمة أكثر تعطي لقبية الورقة أقل الاربعاء
و عند حصر حنون نصيب ثلثة بنين أو ثلاثة بنات ابهمة
ان كثر رواه عنه ليث بن سعد رح وفي رواية أخرى
نصيب ابنين وهفويل الحسن رح واحدي الروايتين
عن أبي يوسف رح رواه هذه هشام رح وروى الخصاف رح
عن أبي يوسف رح الندوتي نصيب ابن واحدا وبنت
واحدة وثمانية الفئران ويبعد الحفف يفوله *
لا يوجد مافي الرحم سوى الله سبحانه تعالى ويجوز أن يكون ذلك لانساداد فم الرحم لمراض علی سبيل الندرة فلا اعتداد به ورن الثاني أن المراد غيشه عنها قريباً من سنتين واثبات النسب كان بانوار الزوج شريفية

صفحة 187

لا يوجد عابيضة رض فانها قالت لابقى الولد في رحم امه أكثر من سنتين ولويكة مغزل ومثل هذا الاعرف فياسابل سما حسان رسول الله صلى الله عليه وسلم شريفية صفحة 187 فان كان الحمل من الميت وجاءت بالولد لنحتم أكثر الحمل اوائل منها ولم تكن اقرت بانقضاء العدة بث ويوث عنه وان جاءت بالولد لاكثر اكثر الحمل لا يتر ولا يورث عنه وان كان الحمل من غيره وجاءت بالولد لستا اشيرا ظال ييرث وان جاءت بالولد لاكثر اقل مدة الحمل لا يتر * سراج... صفحة 190

اذلم يتمثل علوته حينئذ ولا ضرورة هنا الى تقديير وجودة في زمان الموتخلاف ما إذا كان الحمل من بعث العلوه هناك يستند الى اختراقات الحمل لضرورة اثبات نسبة من الميت بعد رفعة القناع بالموت اما إذا كان
الباب الثاني عشر في الحمل والمفقود والأسير والفرقي والحركي والهدمي

281

اكرمة الحبل سنتان عند ابي حنيفة رح واصحابه رح، وعن ليمس بن سعد القدر، ثلث سنة، وعن الشافعي رح نار بع سنة وابن لزهر، رح سبع سنين واقلا سنة أشهر بالтыا، سراجية وشروفيه صفحه 186 و187.

282

والشافعي رح مروي ان الضحاك ولد أربع سنين وقد نبت ثنايه ودوضوك فيصمي ضحاك عمو عبد العزيز الماجشوني أيضا ولد أربعي ربع سنين وقد اشتهر في نساء ماجشون انهم بدو كذلك وروي ان رجلا غاب من امرأته سنتين ثم قدم وهي حامل فهم عمر ردى ان يرجوها فقال له معاذان كان لج سبيل عليها لا سبيل له، لبي مافي بطنها فتركها حتى ولدت ولدا وقد نبت ثناية وشبه اباه فقال الرجل هذا ابني وأبيب الكعبة فانبت عمر ردى نسبه منه مع أنه ولد أكثر من سنتين وقال لولا معذب له ذلك عمر والجواب من الأولى آن الضحاك وعنده العزيز، وكأن يعرف أن ذلك من انفسهما ولا يعرفه غيرهما إلا أن طلاع
وضرب ايضانصيب ابني بنت العمة وهو واحد في ذلك المضرب فكان ستة فكل واحد منهما ثلثة وجمع هذه الأنصباء اربعة وعشرون وحكون لفريق الام من اصل المسئلة اثنان فذا ضربناهما في المضرب الذي هو والهة بلغ اثنى عشر فهمي نصيب هذا الفريق من السنة وثلين وامانصيب احدهم فنقول اذا ضرب نصيب ابن بنت الخال وهو واحد في المضرب اعني السنة حان ستة فكل واحد منهما ثلثة وإذا ضرب نصيب فروع الخالتين وهو واحد أيضاً في ذلك المضرب حان ستة فلا بني ابن الخالة اربعة من تلك ستة فكل واحد منهما اثنان فقد حصلت لكل من الاثنين خمسة ثلثة من جهة الخال واثنان من جهة الخالة ولبنتي بنت الخالة اثنان منها لكل واحدة منها واحد ولابنين عشرة وللبنتين اثنان وجميع هذه الأنصباء اثنى عشر فذا انضم إلى الاربعة والعشرين كان المجموع ستة وثلتين * شريفية صفحة 174
ابناء ولا استقاموا وحدها خمسة بل بينهما مباينة فتركن الفضرة خمسة حيثما نظرنا إلى الأين الذين هو وفق روئ فريق الاب والي هذه الخمسة فوجدناهم مباينين فضربنا أحدهم في الآخر قصرا عشرة فضرناها في أصل المسئلة الذي هو ثلاثة صارت تلتين ومنها تضم المسئلة ثلاثاها عنى عشرين لفريق الاب عشرة منهما لبني بنت العمة لا ي والبنات ولئنا عنى عشرة لفريق الأم ثمانية منها لايين واثنان للبنات * شريفة صفعة * 176

وبعد محمد رحمه الله تعالى تضم هذه المسئلة من ستة وثلتين ومنها تضم المسئلة كانت لفريق الاب اربعة من أصل المسئلة وقد ضربت في المضرب الذي هو وستة فصارت اربعة وعشرين فهي نصيب هذا الفريق من السنة ولم التلتين ومانصيب واحد هم منها فنقل قد ضرب نصيب بنتي بنف العم لاب من جهة ذو وهواتين في ذلك المضرب صارايني عشر فكال واحد منهما وضرب أيضاً نصيبهما من العمة وهو الواحد في المضرب المذكور وكان ستة فلكل واحد منها ثلاثة فقد حصلت لكل واحد منها أربعة نصف ستة من جهة العمة
عمة لا ب عم لا ب خالة لا ب خالة لا ب خال لا ب
بنت ابن بنت ابن بنت
ابن بنت
بنت
ابن
قاضي المشيئة هناء من ثلاثة ثلثها وهما اثنان من هنا القرابة
الاب وثلثها وهو واحده لقربات الإيم لكن عند ابن يوسف رح
تصبح هذه المسئلة من ثلاثة وذلك لأن ما صاب فريق
الاب وهو وثنان وعدادهم إذا اعتبار عدد الجهات
في الفروع أربعة لان البنتين في هذا الفريق كر ببنت
بنت من جهة ابن العمة لا ب وثنان من جهة بنت العم
لا ب لكن نختصر عدد الرؤوس فتجعل هذه البنات الأربع
كاثنين فهذا الفريق أربعة ابناء ولا استقامة لما أصابهم إني
للاثنين على الاربعه بل هما توافقان بالنصف في عدد
الرؤوس إلى نصف وثنان ومتان وما صاب فريق الإيم واحد
والنادرهم إذا اعتبار عدد الجهات في الفروع خمسالانا
نحسب الابنين في هذا الفريق أربعة ابناء اثنان من قبل
ابن الخالة لا ب وبين من قبل بنت الخال لا ب ونحسب
للاختصار البنتين فيهم ابنا واحدا فهذا الفريق خمسة
المال ع كله لبنت العم لا ب لانا ولد العصبة
سراجية صفحه 168 و 169 و 167 و 165 و 164
و اسن طوار ليا القرب ولان اختفى حق قرابتهم
لا اعتبر قوة القرب و لا لولد العصبة في ظاهر الرواية قياسًا
على عمة لا ب وام مع سكونها ذات القربين و ولد
الوارث من الجهتين ليست هي الأولى من الخالة لا ب
لكن الثلاثين من يدل بقرابة الأب فتعتبرهم قوة القربة
ثم ولد العصبة وأهلي لا ب يدل بقرابة الام و تعتبرهم
قوة القربة ثم عند أبي يوسف رح مام صب لكل
فريق يقسم على اباني فروعهم مع اعتبار عدد الجهات
في الفروع و عند محمد رح يقسم المال على أول بطن
اختفى مع اعتبار عدد الفروع والجهات في الأصول
كما في الصفه الأول *سراجية صفحه 167 و 167 و 166
فاذ فرضنا أنه ترك ابني بنت عمة لا ب و بنتي ابن
عمة لا ب هما أيضا بنتا بنت عم لا ب و ترك مع ذلك
بنتي بنت خالة لا ب و ابني ابن خالة لا ب هما أيضا ابنا
بنت خال لا ب هذه الصورة
حيز قرباتهم خلافًا فلا اعتبار لقوة القرابة صعومة لاب وام وخلال الأيام أو خالة لاب وام وعمة لام فاثنان لقربة الاب وهونصب الاب والثلث لقربة الام وهونصب الام ثم مااصاب كل فريق يقسم بينهم كمال واحد حيز قرباتهم
* سراج

فصل في أولادهم

الحكم فيهم كحكم في الصف الأول عني أوليهم بالميراث أقربهم إلى الميت من أي جهة كان أو استووا في القراب وكان حيز قرباتهم متعادل فانت هنا قوة القرابة فهوا لواء بالاجماع وواع استووا القراب والقرابة فولاد العصبة أولي كنبت الام وابن العمة كلا هالاب وام أولاب المال كله لبنت المين لما ولد العصبة وإن كان احدهم الاب وام والاخرلااب المال كله لم كان لقوة القرابة في ظاهر الرواية فقياس على خاله لاب معكونها ولد ذي الهم وهي أولى لقوة القرابة من السائر لام مع كونها ولد الوالي من الترجيح بمعنى فيه وهو قوة القرابة وأولى من الترجيح بمعنى في غيره وهولالاء بالوازه وقال بعضهم رح
فصارة عشرة فيهما وكان بناتابنالاخت لام إثنان منها ضربناهما في ذلك المرض وبصاراربعة ندنيها يلها كان
لابن بناتالاخلاب واحد منها فضربناها في ذلك المرض
فصارة عين فهمه عليه وكان بناتابنالاخت لاب واحد منها
ضربناها في الاثنيان فلم يتغير فدفنناهما هما ليهما فصارنصيب
الاثنين من جهتين ثمانية عشرنلل واحد منهما سعة;

شبه صفحه 125 و 126

فصل في الصفح الرابع

الذي ينتهي إلى جدي الميت ووجدته وهم العمات
على الاطلاق والإمام لا م و الإخوان والخالات مطلقا
شريف

وإذا اجتمعوا كان حيزوراتهم صنعان كالمميات والإمام
لا م والإخوان والخالات فلا قوى منهم أولى بالإجماع
أعني من كان لا م و الاب أولي من كان لا م من كان لا م
ولى من كان لا م ذكروا كانوا واناثا وأن كانوا ذكروا واناثا
وإلى كلاهما وعمة كلاهما و ليسوا وخلا وخلا كلاهما
لا م أخوال وخلا كلاهما لا م و ولم أخوال ولام و لم كان

شريف
عدد بنثي بنتها فهذا كانتين لاب وام فلها ال ثانو والباقي منها وهو واحد للاخت لاب للذين كمل حظ الزنفير بطرق العصوبة ودا اعتبرنا عدد بنثي ابن الاخت لاب فيها كانت كائتين لاب فالوحد الباقى يكون بينهما وبين الاخت لاب نصفين فاذنا اضرابا خرج النصف وهو الاثنان في اصل المسئلة وهو ستة صار الحاصل اثنى عشر كانت للاخت لاب وام من اصل المسئلة اربعة وقضير بنها في المضروب اعني اثنين بلغ ثمانية اعطيناها بنثي بنثها وكان للاخت لام من اصل المسئلة واحدة ضربنها في ذلك المضروب فكان اثنين فاطعناهما بنثا ابنها وكان للاخت لاب من اصلها واحدا اضراها فبنها في ذلك المضروب اثنان فقسناهما بين الاخت لاب انصا فا كنا عرفت فلك واحد منهما وأحادفنا نصيب الاخت لاب وهو واحد الى ابن بنثا ودفمننصيب الاخت لاب وهو واحد أيضا الى بنثا ابنها فلا يستقيم عليهما اضرابا عدد هما في اصل المسئلة وهو اثنين مشرحا ربة وعشرين فنها تسمح المسئلة كانت لبنثي بنت الاخت من الابيين ثمانية من اثنى عشر فضرفها في المضروب الذي هواثان
بنت ابن لأخ لاب وام بنت ابن الأخ لاب. وام ابن الأخ لاب ولما لاب ولدا العصبة ولهما أيضا قوة القرابة وسراجين صفحة 143 و144.

وقد راد بعض الشاهرين هنما مسئلة لا عتبة الجهات وعدد الفروع في الإصول فقال ولو ترك ابن بنت اخت لاب وبنتي ابن اخت لاب وهم أيضا بنتا بنت اخت لاب وام وتركها أيضا بنت ابن اخت لام بهذه الصورة.

هذا اخت لاب اخت لاب لاب اخت لاب وام اخت لام ابن بنت ابن بنتي ابن بنتي إبراهيم يوسف رح المال كله لبنتي بنت الاخت لاب ولم تيزان روابه وعند محمد رح يقسم المال على الإصول التي هي الأخوة والأخوات وتعتبر فيها الجهات وعدد الفروع بما فيهم فرعين فكل فرع منهم يقسم على فروعهم واص للاخت لام وام، وهي ثلاث للاخت لاب وام لا ينعتبر فيها.
(93)

باعتبار الأبدان أي ابتدان الفروع لعدم الاختلاف في أصول هذين الفرعين ولا شيء لفرع بنى العلات لأنهم مجموعون بنى الأعيان كما سابقتوصم هذه المسألة. عند محمد رحم من تسعة لان اصل المسألة من ثلاثين حد مناهل بنى الأخياف الثلاثة ولا يستقيم عليهم واثنان بنى الأعيان واحد منهما لبنت الاخت لا ولاب واب واحداً لا بن الاخت منهما بنت الاخت منهما وهم كتبت بنات لا أن ابن كنتين ولا يستقيم الواحد على الثلث لكن بين رؤوس بنى الأخياف ورؤوس بنى الأعيان مماثلة فضرنيا حد الثلاثين في اصل المسألة وهو ثلثة إضافصارت تسعة فتصح منها المسألة كان بنى الأخياف من اصل المسألة واحد ضرنيا في الثلاثة فكان ثلثة فكلاً واحداً حذفناه واحد وكان بنى الأعيان من اصلها اثنان ضرنياها في الثلاثة ففصلنها ستة فناعًا منها ثلثة إلى بنى الاخت واثنين إلى بنى الاخت سراجية وشريفية

صفحته 163 و112
ولترك ثلاث بنات بنى اخوة متفرقين بهذه الصورة
بنت الإخ لاب وام بنت الاخ لاب بنت الاخلام
ابن الاخت ابن الاخت ابن الاخت
بنت بنت

عندما ي يوسف رح بقسم المال بين فروع بني
الاعيان ثم بين فروع بني العلات ثم بين فروع بني
الاختاب للذكور مثل حضانات نين ارباعا اعتبارا للإبدان

سراج...

١٩١ و ١٩٢

عند محمد رح بقسم ثلث المال بين فروع بني الاخيا ف

على السوية الثلاثة لتموا اصولهم في النسمة ف اذا اعتبر عدد
الفرع في الخت لام صارت كانها اختان لام ف اخذ
هي ثلثي مال وياخذ الاخ لام ثلثه ثم ينسل نصيهم
الي فروعهم و الباقى وهو ثلث المال بين فروع بني

الاعيان انصفا لاعتب رعد المفرع في الأصول فنصير بهذا

الاعتب الاخت لاب وام كاختين من الا بوين فتساوي

اخاه في النصيب و حين ذك نصف اي نصف الباقى

وهوا نصف لبنت الخ نصيب ابيا و النصيب الآخر من ذلك

الباقي بين وادي الاخت لاب وام للذكور مثل حضانات نين.
(90)

وعند محمد رحم الله بينهما انصرفا باعتبار الامول وهو ظاهر الرواية والوجه فيه ان استحقاقهما للميراث بقرابة الام، وباعتبار هذه القرابة لا تفضيل للذكر على الأخت إلا اصلاً بل ربما تفضل الأخت عليه الأثرى ان الام سابحة فرض بخلاف اب الا مفاهيم لم تفضل الأخت هنافلاً اقل من التساوي اعتباراً بالدليل به سراجية وشريفية صفحه 150، وإن استورى في القراب وليس فيه ولد عصبة أو كان كلهم أولاد العصب او كان بعضهم اولاداً الجامع وبعضهم اولاد اصحاب الفراعس فابوسس رج يعتبر الأقوي في القرابة فنعدة من كان أصله احلااب وام اولى مسن كان أصله احلااب فست أو لم فقت سراجية وشريفية صفحه 151، ومحمد رحم يقسم الام على الأخوة والأخوات مع اعتبار عدد الفروع والجهات في الأصول فما اصاب لكل فريق يتم بين فروعهم كما في الصف الأول كما إذا ترك ثلاثة بنات الأخوة منغفرتين وثلثتين بناة من غفران، بهذه الصورة...
فصل في الصفن الثالث

الحكم فيهم كما الحكم في الصفن الأول عن على واحد

بالإيراث اقربهم الى الميت وان استواون ذلك كونت ابن الا
ولد ذو الاراحم كنت ابن الا خ
وايتهما الابت لاهل الاب يوام وام اولا بما واحد
هلالاب وام والا خناراب المال كناب لعئا ابن الا
لانهاب ولد العصبة * سراج

189

ولكنما أي بنت ابن الا خ وابن بنت الابت لم كان

المال بينهما لنذكر مثل حات الا تأثير عندنا بع يوام رح

باختهبا ر واليد ان فاين الابت في الاصل في المواي تفضل الذكر

على الابت وابناته هذا الاصل في الاخوة والأخوات

لا يمل حيل على خلاف الفياس عن النبي تعالى فهم

شركاء في الثلاث وما كان شخصا من الفياس لا يحقق به

ماليس في معنا من جميع الوجوه وليس لأولاد وراء

في معناهم من كل وجه آذلا تولون بالفرضية شيئا فجري

فيهم ذلك الاصل وإيضافة تورث ذوي الاراحم بمعنى

العصبية ففصل فيه الذكر على الاخت كنبا في حقيقت العصوبة
(٨٨)

إلى سهيل الفراشقي وابي فضل العباف وهو ابن عيسى البصري سراج

سيرة صفه

فإنهم يكون ابن الام أولى من ابن الاب لانهما

تباوي في الدرجة لكن الأوكر يدلي بوارث وهو الجدة

الصحيحة يعني ابن الام والثاني يدلي بغير وارث هو

هذين فاسادعني اب الام الذي لا يرث مع ابن الام فكان ابن

الام أقوى فابوها وأبي شريف

شريف صفه

ولا يفضل له عند أبي سليمان الجرخا ني وابي على البستي

ففغى الصورة القزورة يقسم المال هندها ثلاثة فلاب

الام وثلث لاب ابن الام سراج وشريف صفه

وكان استوت منازبلهم وليس فيها من يدلي بوارث وكان

كلهم يدلون بوارث وانقفت صفه من بدلون بهم واتعدت

قرابتهما فالقسمة حينئذ على أبناءهم فان اختلفت صفه

من بدلون بهم يقسم المال على أول بطن اختلف كما

في الصف الأول وان مختلف قرابتهما فالثاني لقراية الاب

وهو نصيب أثاب والثلث لقراية الاب وهو نصيب الاب ثم ما

allocation لكل فريق يقسم بينهم حكما لواحدت قرابتهم

سراج صفه ١٨٨ و١٨٩
هى عدد الرؤس في أصل المسألة و هو سبعاً ثمانية و عشرين منها تسمى المسألة إذا كانت لابن البات في البطن الثاني أربعة فاذن ضربناها في المضروب الذي هو أربعة أيضًا بلغ ستة عشر فاطمة كل واحدة من بنتين ثمانية وكانت للبنين في البطن الثاني ثلاثة فاذن ضربناها في ذلك المضروب حصلائنا عشرين فائناً الي ابن البت البت ستة و البتيني بنت البت ستة فكل واحدة منهما ثلاث فصاً رصبيَّة كل بنت في البطن الاخير واحد عشرينها من جهة ابها و ثالثة من جهة امها * سراجية و شريفية صفحه 186

فصل في الصفن الثاني

اولهم بالابناء ثربهم الى الميت من اي جهة كان * سراجية صفحه 187
فاب الام أولين من ابن الام و كذا ابن الاب اولين من ابن الاب و ابن الام اولين من ابن الام و بعد على ذلك حال الجدات * شريفية صفحه 187
واندلد الاستواء فمن كان يدلي بوارث فهواولي عند
ثانياً لا ين البنتين ذوات الجهتين فكانهما ين في جهة
الأم وينتان أخريان من جهة الأب - حينئذ مار الميت كأنه
ترك أربع بنت ودنا واحداً فيكون ثلاثاً أي ثلث المال
للبنتين ذواتي الجهتين وللباقيين ذي الجهة الواحدة
سراجية وشريفة

131

وقد محمد رح يقسم المال بينهم على ثمانية وعشرين
سهم للبنتين اثناً وعشرين وسهم ستة عشر سهم من قبليهما
وستة سهم من قبل اثناً وسهم من قبل اثناً وسهم
بين ذلك أنه يقسم عند المال على البطن الثاني وفيه
أثناء ابنيين وينتان أحدهما كتبتهين فصار المجموع
كسبت بنات فلمستلة منه عدد بسهم فلا بن اربعة اسهم
وابنتي التي في فرعها عدد سهم ونلاخاريهم سهم واحده
فلا أجعلنا الذكور طائفة في هذا البطن والإناث طائفة
ودعه نصيب ابن إلى البنتين اللتين في البطن الثالث
وصب كل واحدة منهم سهمان وإذا دفعنا نصيب طائفة
الإناث إلى من بزاءههن في البطن الثالث لم يستقيم عليهم
ولا نصيبان ثلثي إسباع وصص بزاءهن ابن وينتان فالجميع
كربع بنات وبين الثلاثة والأربعة مساوية فضمنها الأربعة التي
وهونلك العين الذي نزل في البطن الثاني منزلة ابنين
وعندها أيضًا ثلثة أباضه وهو نصيب البنين اللتين نزلت
احدهما منزلة النبين في ذلك البطن يقسم على ولديهما حضني
في البطن الثالث اسماعيل لما النبنت التي في الثالث
ذى الاسماعيلها عدد نصف زيين كتبين فتساءل ابن
الذي في البطن الثاني يعطي كل واحد منهمنصن ثلثة الإساع
وهوسع نصف سبع وخمسة تكون نصفه أي نصف المقسم
ذوي هوثلثة الإساع يبنن ابن بن نصيب أبيها
وولا ابن الذي كان في البطن الثالث ونصف الآخر
لا بني بنن بن نصيب امهما وهو لبنت التي
ساتن ابن في البطن الثالث وتسمح هذه المسألة من
ثمانين عشرين * سراجية وشريفية صفحه 181 و182 و183
علماء نارح يعتبرون الجهات في التوريد فيران
ابي يوسف رح يعتبر الجهات في اب дан الفروع ومحمد
يعتبر الجهات في الأصول كما إذا ترك بنتي بنن
بنت وهمًا أيضًا بنن ابن بنن وابن بنن
* سراجية صفحه 186 و188
230
239
187
188
188
ابني بنت بنات بنت ابن بنت بنات وبنتي بنت ابن بنت

عند ابن يوسف رحمه الله يقسم المال بين الفروع اسعا بعتيدا وابدانهم

لان الابنين كا ربع بنات ومعهما ثلث بنات اخرى

فالمجمع كسب بنات فلك من البنات الثلاث سهم واحد

وكل من الابنين سهمان وعند اسمود رحمه الله يقسم المال على

أعلى الخلاف اعني في البطن الثاني اسعا باعتيدا وثيدا وفروع

في الأصل يعني أنه يقسم المال على البطن الثاني و فيه

ابن وبنات لكنه يعتبر عدد فروع الابن وهواذان في الابن

فجعلها كابنين ويعتبر عدد فروع البنت التي في فروعها

تعدد فيها فجعل هذه البنت كابنين وعلى هذا يكون عدد

المجمع في البطن الثاني سبعه لان الابن القائم مقيم

الابنين كاربع بنات وهناك بنت ابنت وبنات اخرى هي

واحدة فالجميع كسب بنات فتكون للا ابن في هذا البطن

اربعا اسعا المال والبنت التي في فوقها عدد سبعان

منها وثلبنت والا خرئ سبعا واحد تتم انه يجعل الذكور

طائفة والإناث طائفة اخرى فبعد اربعة اسعا اعي

اسعا المال لبنت ابن البنت ان هي نصيب جداهم
فرعه في السادس وقد وقع فيه بأبائه البنين ابن وبنت. فقسمانهما الصيحة عليهما فاصابت ابن اربعة والبنت اثنان.

ووجدنا في الخامس أيضا بأبائه البنين الثالثة في البطن الرابع ابن وبنت. فقسما نصيحة أعيني السنة عليهم فاصابت ابن ثلثة والبنين الثلاثة فدفعنا نصيبه

الابن على فرعه في السادس وجذبه في بأبائه البنين ابن وبنت. فقسما النصيحة بينهما فاصابت ابن اثنان وبنين.

وأحدهما إذا جمعنا هذه النصيب كلاهما كانت ستين

كما رقت بأبائه لفروع في البطن السادس شريف

١٥٨

كذلك محمد رحمه الله أخذ النصيحة بكلة الذكورة والإنونة من الأصل حال القصمة عليه وأخذ الأصل من الفروع يعني 

أنه إذا قسم المال على الأصل يعتبر فيه صفة الذكورة والأنونة التي فيه ويعتبر أيضا فيه عدد الفروع كما إذا ترك

اللثا ابنين بنين بنين ابن ابن بنين بنين بنين.

بنين ابن ابن بنت هذه الصالة.
البنات السبع ست البنات وثلث البنين فقسمنا نصيبهم اعمني
الستة وثلثن النفاذ مثل حظ الأثنين فاصابا البنين
ثمانية عشر والبنات ثمانية عشر ثم جعلنا الذكور طائفة
والإناث طائفة ونظرنا الى ما هو اسفل من الثالث
وجدنا في الرابع بارتفاع طائفة البنين ابنا وبنتين فقسمنا
عليهم ما اصاب البنين الثلاثة للذكور مثل حظ الأثنين
فاصاب البنين تسعة وبنتين تسعة ثم دفعنا نصيب الابن
الابن الآخر فروعه لعدم الاختلاف ولم نجد بارزة البنين
في الخامس اختلافا بل في السادس إذ كان فيه بارزاهم
ابن وبنت فقسمنا عليهاما نصيب ابنين اعني النسعة
للذكور مثل حظ الأثنين فاصابتا البنين بنينة وبنين
وكذلك وجدنا في الرابع بارتفاع طائفة البنات الست
ثلث البنات وثلث بنين فقسمنا عليهم ثمانية عشر للذكور مثل
حظ الأثنين فعطينا البنين منها اثنتي عشر والبنات ستة
ثم جعلناهاما طفتيين ولم ننظرنا إلى ما هو اسفل من الرابع
وجدنا في البطن الخامس بارتفاع البنين الثلاثة ابنا وبنتين
فقسمنا نصيبهم الذي هو اثنتي عشر للذكور مثل حظ الأثنين
فاصابت البنين والبنين ستة فدفعنا نصيب الابن الى
الثالث حيث وجد نافية بارائهن ست بنات وثلثة بنين فذا انزلنا كل ابن منزلة بنين كان المجموع كاثني عشر بنتا فلا تستقيم عليه النسبة التي كانت نصيب البنات لكن بين البنت وبين عدد رؤسهم يعني اثنين عشر موزعة على الثلث فضربنا وفق عدد رؤسهم وهو أربعة في اصل المسألة وهو خسارة عشر فصصرين ومنها تصبح المسألة إذ كانت لطائفة البنتين في البطن الأولى ستة من اصل المسألة فضربناها في المضروب الذي هو رابعة يبلغ اربعة وعشرين ونقسمها على ما في البطن الثالث من فروع البنين الثلاثة فعطنا الاابين اثنين عشر والبنين أيضا اثنين عشر ندمفع نصيب الاابين إلى آخر رونه من البطن السادس لعدم الاختلاف ونقسم نصيب البنتين على الابن والبنت الذين بارائهما في البطن الخامس للذكر مثل حالتان نفسيتان فاصبت الاابين ثمانية وربة رابعة ويدفع نصيب كل منهما الى فرعه في السادس وكانت لطائفة البنات في البطن الاول تسعة من المسألة فضربها في ذلك المضروب اضنى الاربع فتحصل ستة وثمانون فذا انظرنا الى ما هو سلف من البطن الاول وجدنا اختلافا في البطن الثالث إذ كان فيه باراه
وأما عند محمد بن عمرو فإنما تصدح هذه المسألة من سنين ولذك،
لا نأ لنا إقسمونا المال على البيضن الأول والثاني المتسامع على تسعة
بنات وثلث بنين على قياس ما ذكرناه في الفروع على
مذهب أبي يوسف رحمه الله فصبت البنين سنة اسمهم وبنات
تسعة فاصبحنا الذكور الثلاثة طائفةً وجمعنا ما صابهم
عندما السنة ونظرنا إلى ما هوا سفل من البيضن الأول
لم نجد في البيضن الثاني اختلافاً، وجدنا في البيضن الثالث
باذاء البنين الثلاثة إناوين فقسمنا السنة عليهم للذكور
مثل حظنا لأنين فأصبحت لابن تعدد ولبنين ثلاث تدفنا
نصيب الأبن إلى آخر رفوعه لان البيضن المتوسطة بينهما
متفقة في لا نوتها وجعلنا البنين طائفة على حدة ونظرنا
إلى ما هوا سفل من البيضن الثالث فلم نجد في البيضن الرابع
اختلافاً وجدنا في الخامس باذاءهما إناوين فقسمنا
التثنى عليها للذكور مثل حظنا لأنين فأصبحت لابن اثنا
والأبن واحدنا ودفنا نصيب كل منهما إلى فروعه
في البيضن السادس وكذلك إذا جعلنا البنات النسب طائفة
وجمعنا ما أصابه ونسبة ونظرنا إلى ما هوا سفل من
البيضن الأول لم نجد اختلافاً في البيضن الثاني بل في البيضن
الفروع المالي بينهما نصفين فظهران المعترفي في القسمة هو المدلالي به فأنه الألب في العمة والإم في الخالة وأيضًا فقد اتفقت على أنه إذا كان أحدهما ولدوارث كان أولى من الآخر فقد ترجع بأعتبارها رممي في المدلالي به.

شرifique صفحه 136

وكان لحمدان إذا كانت في أولاد البنات بطون مختلفة يقسم المال على أول بطن اختفى في الأصول ثم يجعل الذكور طائفة والإماث طائفة أخرى بعد القسمة فهما إصاب الذكور يجمع ويقسم على أعلى الخلاف الذي وقع في أولاده وكذلك ماصاب الإناث وهكذا يعمل إلى أن يتهي سراجي صفحه 137 و 138.

هذه المسئلة مشتملة على إثنين عشر شخصًا من ذوي الراحم تسعة منها إناث وثلاثة منهاذ كروكلهم في درجة واحدة هي البطن السادس وليس فيهم ولدالوارث فهي.

وقد سياسري رح ومن واقعه تمس من خمسة عشرة ودائمي بمنزلة بنتين فيصير المجموع خمسة عشرينا.

عدد رؤسهم في تصحيح المسئلة على رأيه فذلك واحدة من البنات التسع سهم واحد لكل من البنين الثلاثة سهمان.
(78)

كما ذكرت المبت عبد ذات بنت رضي الله بنت محمدها ابيه عبد
أبي يوسف رح وحسن يكون المال بينهما للمادر مثل
حظ النثرين باعتبار الأبناء ابيه ابتدان الفروع وصفاتهم
فلت المال لا ابنه ولثния مثبتات في النثرة
فتتى عندئذة أيضا ابتدان الفروع ولذكرة بنت ابيه
وابيب بنت بذت عندها يقسم المال بين الفروع اثنتا باعتبار
الابن تثنتا للذكر ولثنتو للثنتي كيما في الصورة السابقة
وعند محمد رح يكون المال بين الامول اعني في البطن الثنا
الذي هو أول موقع فيه الاختلاف بالذكر والثنتي
وهو بنت ابنه وابن الابن اثنتا وحينذاك يكون تثنتا لبنت
ابن الابن لان ذلك نصبه ابيها قد انطلق إليه رضي الله
بنت الابن فانه نصيب امه سراج

١٥٩

وش ريث بريدة صفحة ١٥٨

١٥٥

وهذه القول الأول التي يجوز رح واشهر الروايين عن
ابي حنيفة رح وظاهر من مذهب شرifique صفحة ١٥٥

١٥٥

واستدل محمد رح باتفاق الصحابة رضي الله
للامة اثنان والثانية الثالث ولوكا كان الاعتبار بابنا
فصل في الصفح الاول

وابن سماع عن محمد بن الحسن من أبي حنيفة

ان اقرب الأصناف الصفح الاول ثم الثاني ثم الثالث

ثم الرابع سكترنيب العصبات وهو المأخوذ للقوائم

سراجية صفحه 161

واوهم بإمرات اقربهم إلى الميت كتبت البنت ذنها

ولوى من بنت الابين * سراجية صفه 163

وان استوافى الدرجة فولدا الوارث أولى من ولد

ذوى الارجام ككتب بنت الابين اولى من ابن بنت

البنت * سراجية صفحه 164

وان استوت درجاتهم ولم يكن فيهم ولدا الوارث

وكان كلهم يدلون بوارث فعند ابي يوسف رح

و الحسن ابن زيد يعتبر ابدا النروج ويقسم المال

عليهم سواء اتفقت صفة الاصول في الذكرورة والانونة

أو اختلفت ومحمد رح يعتبر ابدا النروج وإن أتفقت

صفة الاصول مواقفهما ويعتبر الاصول أن اختلفت

صفاتهم ويعتيب الفروع ميرات الاصول مخالفاتهم

سراجية صفحه 168
الإحواة من الأبوين أومن أحدهما، وبنو الأخيرة لاموان سفروا، سراجة وشيريفية صفحة 139 وصنفان لا ينتمنى إلى جديهت وهماب الإب واب الام، وجدت يهمهم الإب واب الام، وهمهم العمات على الإطلاق فأنهم خواتة لاب الميت فإن يمكن خواتتهم من الأبوين أو من الأب فهن منسجية إلى جد الميت من قبله، ان كانت خواتتهم من أمههن منسجية إلى جدته من قبله، وهمهم لا فأنهم خواتة لا يهمهم اهمهم، أيضاً، وكونهم في الأعماهم لا من الأبوين أو من الإب عصبة والأخوات فأنهم خواتة، وهمهم خواتة، لا الميت فأن كانونهم أمهن من أمهن، ومن اهيافهم صنمنهم إلى جد الميت من قبله، كانومن أمهن من أمهن، كانوا منمنين إلى جدته من قبلهم. سراجة وشيريفية صفحة 140.

روى أبو سليمان عن محمد بن الحسن عن أبي حنيفة رحمهما الله، أن أقرب الاصناف هو الصنف الثاني، رواه ثم الأول، وروى عنه من أبي يوسف، والحسن بن زيد عن أبي حنيفة، رح.
في التسمة فيكون تسع نفسي لكل واحد منهما

الباب الحادي عشر في ذوي الأرحام

وزاو الرحم هو كل قريب ليس بدي سيهم ولا عصبة كانت عامة الصحابة برون تورى ذوي الأرحام وبقال أصحابنا قول زيد ابن ثابت رغ لامبرات لذوي الأرحام ويوضع المال في بيت المال وبقال ما لك والشافعي رح سر جيه ص ف ص 137 و 138

وقد والأرحام أصناف أربعة الصنف الأول ينتمي أي ينتمي إلى الوليمة وهم أولاد البنات وان سفوا كورا كانوناتا واحد بنات الدبن كذلة والصفن الثاني ينتمي إلى الوليمة وهو الاجداد الستطنين أي الفاسدون وان غواكب الوليمة وأبابهما وجدت الساقطة أي الفاسدة وإن غواكب الوليمة وأبابهما وان غواكب الرأبة ينتمي إلى ورث الوليمة وهو الولائم الأول وعازنات وهو أولاد الأخوات وان سفوا سواء كانت تلك الأولاد ذكورا وان ناناتا سواء كانت الأخوات لابوهم أولاد أوانما وبنات الاخوة وان سفوا سواء كانت
(٧٥)

والاربعة مباينة فأضرب إجتنذاداً ارعة في التصرع السابق

إنهئ الأثنين والثلثين يبلغ مائة وثمانية والعشرين فهياً

صخرح المسئولين فان كان له نصيب من الأثنين والثلثين

يضرب نصيبه في الارعة التي هي مسئولة الجدة وس كان له

نصيب من الأرعة يضرب نصيبي منها في جميع ما كان

في يد الجدة وهي تسعة فنقول قد كان لا مرأة من مات

ثانياً وهو زوج الميت الأول سهماً من الأثنين والثلثين

فاذاء ضاربتهما في الارعة بلغ ثمانية فهياً لها وانتما لا بيه

منها ارعة تضربها في الارعة يبلغ ستة عشر فهياً له وكان

لامة سهماً فذا ضاربتهما في الارعة صار رثنانية فهياً لها

وكانت لكل واحد من بني من مات ثانياً وهي بنت

الميت الأول ستة من العدد المذكور ضربتها في الارعة

يبلغ ارعة وعشرين فهياً لكل واحد منها وكانت لبنتها

ثلثاً من ذلك العدد فأذا ضربتها في الارعة يبلغ اثني عشر

فهي لها وكان لزوج من مات رابعاً وهو الجدة المذكورة

من الأرازة التي هي مسئولتها سهماً فذا ضربتها في

التسعة التي كانت في يدها نصير ثمانية عشر فهياً له وكان

لكل واحد من أخواتها من مسئولتها سهم وأخذ نضربه
نصيبه وتدريبها لام، لم يت الأول ثلث من ستة عشر نصيبها في اثنين يبلغ ستة فه فيها ودنت للزوج منها أربعة قربها في اثنين تحصل ثمانية فه فيه ومستحيلة على ورثته ولزوجتهما فه هما وولدهما ولدهما فهما ورثتهما من اثنين وفهما في ذلك الوافق لم تختلف الحال وكان لكل واحد من ابنه البنت سههم من مستلتها وهي ستة فادسي يضربناها في الثلثة سارت ستة فه فيه ودية لبثتها من مستلتها سهم واحد فادسي يضربنها في الثلثة كان ثلثاً فه فيها وكان أجد تهما من مستلتها أيضاً واحد ضرب في ثلثاً فه فيها وقد كانت لها باعتبار كونها امام مات اولاستة من اثنين وثلثين فه في الدجة حين تدفعة

شريف

١٢٣

وان كانت بينهما مبانيца فضرب كل التصحيف الثاني في كل التصحيف الأول * سرجية صبي ق١٣١

كما إذ مانت في ذلك المثال الجيدة التي هي امرأة المنوفاة ولا خلفت.. وجا واخروان فان ما في يدهانسعة

حكا مرفوت آنها وتصحيح مستلتها أربعة وبين النسحة
(73)

تسعة والأمثلث ثلثماثلث تلقك الأربعة التي للزوج منقسمة على ورثته المذكورين فلزوجته واحد منها ولم يمض ما يبقي. 
وهو أيضاً واحد ولا يبه اثنان فاستقام ما كان في يد الزوج
من التصريح الأول على التصريح الثاني وصحت
المسؤلتين من التصريح الأول * سراجٌ
قريباً صفحه ۱۰۱ إم و۱۰۲ و۱۰۳ و۱۰۴
وكان لم يستقم فانظرى كانت بينهما موافقة فاضرب
وفق التصريح الثاني في جميع التصريح الأول *
سراجٌ قريباً صفحه ۱۰۲

كما إذا ذات البنت إضافي ذلك المثال وخلفت
كما ذكرتني وبنيت وجدت فان مافي يد حما التصريح
الأول نسعة وتصحيح مسؤوليتها سنة وبينهما موافقة بالثلث
فيضرب ثلاث سنة وهما بين في ستة عشر فالمبلغ وهما بين 
وثلث من مخترع المستلزمين فن كنف كانت سهامه من ستة عشر
أعيين ورثة اليمت الأول تضرب سهامه تلك في وفق
مسؤلة البنت وهما بينان في حصول نصيب ومن
كنف كانت سهامه من ستة أعيين ورثة اليمت الثاني تضرب
سهامها في وفق ما كان في يد البنت وهو ثلثاً مما حصل كان
على قياس ما نارد في باب التصحيح من أن سهام ساك
فريق ان كانت مستقيمة عليهم بلا كسر للاحجة إلى ضرب
فان التصحيح الأول هنالك بنزولة أصل المسألة هناك
والتصحيح الثاني هنالك بنزولة رأس المقصوم عليهم نه
وما في نزول الثاني بنزولة سهامهم من أصل المسألة
ففي صورة الاستقامات تصح المسائلتان من التصحيح
الأول كما إذا مات الزوج في المثال المذكور من امرأة
وابيؤن على ماذكره الكتاب وذالك لأن المسألة الأولى
رديئة لأن أصلها اثنى عشر لا جماعة الربع والنصف
والسدس فاذذا اخذ الزوج منها ثلثة والبنت ستة والام
اثنتين بقي منها واحد يجب رده على البنت والام بقدر
سهامهما فإذا ردت المسألة إلى اقل مخرج من لابد عليها
صارت أربعة فاذذا اخذ الزوج منها واحدا بقيت ثلثة
فلا تستقيم على الأربعة التي هي سهام البنت والأم بل
بينهما ثمانية مضرب هذه السهام التي هي بنزولة الرأس
في ذلك الأقل فتحصل ستة عشر للزوج ومنها أربعة للبنت
ضرائب النسلة في عشر فصول ستة وثمانون

فضرائب هذا الحاصل في الأربعين بلغ النازرت والعمرياء وأربعين.

فمنهما تُصم المسألة على أن أحد الفرق كان نصيب الزوجات من الأربعين حمسة وتد ضريرها في المضروب الذي هو ستة وثمانون فلا فآيا وثمانين فلكل وحيدة من الزوجات خمسة وأربعون وعندن نصيب البت منهما ثمانية وعشرين وضرينية، وتد ضريرها في ذلك المضروب فصار الفاوئماثلة للكل واحدة منهنما، واثنتا عشرة كان نصيب الجداد منهما، وتد ضرينية في المضروب المذكور فصارمااثين واثنين وخمسين فلكل واحدة من الجداداثناثستة وأربعين.

الباب العاشر في المناخة

وأما ربع الأنصاء ميارة قبل القسمة كزوج وبابت رام
فما ذلك الزوج قبل القسمة عليه ولا بويين ثم ما تائبت
عن بابين ودبنت وحيدة ثم ماثت الجدة من زوج وأخرين
لاعمل نيدان نصوح مسألة لم يت رأول وتعرسها م كل بارث
مي التاريخ ثم تصبح مسألة المراد الثاني وانتظر بين مافي بداء.
من يرد عليه ارعة فإذا اضربناه فيها بقية من مخصر فرض من لا يرد عليه ووسعة بلغ ثمانية وعشرين فهى له من الأربعين للجادات من مستثنى من يرد عليه واحد فذا ضربناه في السبعة كان سبعة فهي للجدات فقد استقام بهذا العمل فرض من لا يرد عليه وفرض كل فريق منهم يرد عليه وان لم يستقم على أحد كل فريق فلذلك قال فكان أنسرت السهام الثلاثة لما استقله السبعة السبعة من مخصر فرض الفريقين على البعض أو الجمع سبعته للصلة بالآصل السبعة السبعة من مخصر فرض الفريقين

في باب التصييح فهى الصورة التي نحن فيها كان من الأربعين نصيب الزوجات الأربع خمسة فين روؤسهن وسهامهم مبانيه فخذناها جميع عدد روؤسهن وكانت سهام البنات السبع منهما من وسعة وعشرين فين روؤس والسهام مبانيه فتركننا عدد روؤس بحالها وكانت سهام الجادات السبع منهما السبعة وبينهما إضافبيه فأخذناعدد روؤسهن باسو ثم طلمنا بين اعداد روؤس وروؤس الموافقة فوجدنا أن روؤس الجادات وروؤس الزوجات متوافقة بالنصف فضرة نصف الأربعة في السنة فبلغ اثنى عشر يفى موافقة لروؤس البنات الثلاث لثلث
فرض من لا يرد عليه وهو الثمانية فبلغ أربعة فهذا المبلغ خرج فروض الفريقين وإذا أردت أن تعرف حصة كل فريق منهما من هذا المبلغ الذي هو خرج فرضهما فقريته ما اشترى راليه بقوله ثم ارقب سام من لا يرد عليه من أقل خراج فرضه في مسألة من يرد عليه فيكون الحاصل نصيب من لا يرد عليه من المبلغ المذكور وذلك لا نصيب من لا يرد عليه من المبلغ المذكور ففي ذلك لا ضربًا بLESaison من يرد عليه في أقل خراج فرض ممن لا يرد عليه فيكون الحاصل من ضرب سهامه من هذا الأقل في المضروب الذي هو تلك المسألة حصة من المبلغ الذي حصل من ضرب هذا المضروب في المخرج الأقل على قيس ما تحققته فيما يصدرا وأضرب أيضا سهام كل فريق من من يرد عليه من مستحقاتهم فيما يصدرون من خراج فرض من لا يرد عليه فيكون الحاصل نصيب ذلك الفريق من يرد عليه وذلك لا أعحق كل فريق من يرد عليه انما هو الباقى من خراج فرض من لا يرد عليه بقدر سهامهم ففي المسألة المذكورة الزواجات من ذلك الخراج واحدًا فان ضرب حفي الخمسة التي هي مسألة من يرد عليه كان الحاصل خمسة ففي حق الزواجات من الأربعين و للبنات من مسألة
(27)

リアル標準及び四月旧道及び息子等令

سراجبنبانية صفحه 11 و 11


نا قيل مأخوذ من لا يرد عليه ريبة إذا اخذت

امرأة واحدانها بقيت ثلث وهي هنامست仅次 على مسألة

من يرد عليه لا أنها إضافت لثلا من الخواص لام الثلاث

وحق الجبات السدس فللأخوات سهمان للجادات

هم واحدانها هذه الصورة استبان الباقي على مسألة

من يرد عليه شريفن صفحه 13

وآن لم يستثمْن فصيغ جمع مسألة من يرد عليه في من خرج

فرض من لا يرد عليه فالمبلغ مخرج فروض الفريقين

سراجبنبانية صفحه 11

كرب زوجات ونسج بنات وست جادات أصل هذه

المسألة على ماسيق من ريبة وصرين لاقتلاط سهم

بالتلتين والسدس لكنها في فرد دناها إلى اقل مخارج

فرض لا يرد عليه وهو الثمانية إذا اضافنا إلى الزوجات

بقيت سبع فلاتنتقيم على الخمسة التي هي مسألة من يرد

عليه هنلاين الفرضين تلتان وصدس بل بينهما مباينة

يضرب جميع مسألة من يرد عليه امنى الخمسة مخرج
في الأربعة يبلغ ثمانية فل الزوج من بنتان والبنات ستة

سراجية وشرفيَّة صفعة 111

فإلا ضرب كل عدد روئيه في خبر فرض من لا يرد عليه في المثل هكذا يرد مثلهم فهكذا نصوص

بالنسبة الماقرة المسألة كجزء من خمس بنات هذه الصورة

كالصورتين السابقتين أصلها من أثنتي عشر لاجمع

الربع والثلثين لكنهما يرد مثلهما إلى الأربعة التي هي

إلى مخالج فرض من لا يرد عليه إذا امطين الزوج هكذا

واحدا منها بقيت ثلاثة فلا تستقي على البنات الخمس

بل بينها وبين عدد الأروء مباينة فيرتبنا كل عدد روئهن

في خبر فرض من لا يرد عليه أي الأربعة فحالت

مشرف ومنها تصح المسألة كان للزوج واحد ضربنا

في المقرب الذي هو خمسة فكان خمسة فامطين إياها

وكان للبنات ثلاثة ضربنا في الخمسة حصلت خمسة عشر

فلكل واحدة منهن ثلاثة * سراجية وشرفيَّة صفعة 111

والتين يكون مع الثاني من لا يرد عليه فافس

ما يبقى من خبر فرض من لا يرد عليه على المسألة من

يرد عليه فإن استقام فبهما وهذا في صورة واحدة وهي

إن يكون للزواجات الربع والباقي بين أهل الود
(٦٦) 
جناس تلة وسهامهم المأخوذة من السنة خمسة أيضًا ثلاثية
منها للبنت وواحد لبنت الابن وواحدة فتقم الوردة
عليهن اخصاما بقد رسهامهم فللبنت ثلاثية اخصاما بها ولبنت
الابن خمس ولالام خمس آخر* شريفية صفعة ١٠٩
١٠٦ واتتلت أن يكون مع الأول من لا يرد عليه فععط فرض
من لا يرد عليه من أقل مخا رجه فان استقام ابنا في على عدد
رؤس من لا يرد عليه فنبا كروج وثلت بنات أقل مخا رج
فرض من لا يرد عليه ربية فان اعطت الزوج واحد منها
بقيت ثلاثية وهي مستقيمة على عدد رؤس البنات وهونظير
مأرفي باب التصحح من انة ان كانت سهام كل فريق
منقسمة عليهم باللاكسوفلا حاجزة إلى ضرب
سراجية وشريفية صفعة ١٠٠٨
١٠٧ وان لم يستقم فاضرب وفق رؤسهم في مخرج فرض من لا يرد
عليه ان وافق رؤسهم ابنا في كروج وست بنات فان اقل
مخرج فرض من لا يرد عليه أربعة فان اعطتنا الزوج
وج واحد منها بقيت ثلاثية فلا تستقي على عدد رؤس البنات
الست أمكن بينهما موافقة بالثلث اذلاعبرة للمداحلة
حكما مرفت فاضرب وفق عدد دروسهن وواثان
أومن ثلاثئة إذا كان فيها ثلاث وسدس وصُنف ودس اومن خمسة إذا كان فيها ثلاث ن، ودس اونصف وسدس اونصف وثُلث

سراجين صفحه 108 و109

300 كيدة واخت لام لا ستة المسائلة حينئذ من ستة ولهمانها

ائتان بالفرضية فاجعل الاثنين اصل المسائلة واقسم

الشركة عليها نصفين فكل واحد منها نصف المال

شريفين صفحه 108

301 كولدى الام مع الام إذا المسائلة على هذا التقدير أيضا

من ستة وجمع السهام المأخوذة للورثة المذكورة ثلاثئة

فجعلها أصل المسائلة واقسم الشركة الثلاثة إلى تلك السهام

فلولدى الام ثلاث من المال ولام ثلاث * شريفين صفحه 108

302 كبنت وبنت ابن أوبنت وام لا ستة المسائلة أيضا من ستة

وجمع السهام المأخوذة منها رابعة ثلاثئة للبنت وواحد

لبنت الابن او اللام فإجعل المسائلة من اربعة وأقسم

التركيبة إلى اربعة ثلاث سهوب لها للبنت وربع منها لللام او بنت

الابن * شريفين صفحه 109

303 كبنت وبنت ابن وام وفي الصورة الثانية قد اجتمعت
197 فإن كان الوارث مسح بمحب لغيره كان قد والإخ وساهم لإدفع إليه المال كان زوج ونفقة للزوج والربيع للمَرَأة وقال أبو يوسف رح اقتل النصيبيين فتوى سراج

198 فغالب أقسام أربعة واحدة أن يكون في المسألة جنس واحد مسح يرد عليه عند عدد م من لا يرد عليه فاجمل المسألة من رؤهم كما إذا ترك بنين أواختنين أو جد تنين فجعل المسألة من اثنين فعطل بكل واحدة منهما نصف المال لتساويهما في الاستحقاق ورجع جميع المال اليهما على السوية فتكون القسمة على عدد الروس سراج

199 والثاني إذا اجتمع في المسألة جنسان وثقت اجناس مسح يرد عليه عند عدد م من لا يرد عليه فجعل المسألة من سهامهم أعني من اثنين إذا كان في المسألة سدان
ذكرناها كحذوة بجواب يقول أنها احذؤة لاب وام لااب ولام* فتاوى سراجية ——— صفحه 580

13 رجل أسمع أنه وارث فلان الميت وأمام شاهدين شهدا أنه وارث فلان الميت لا وارث له سواء فان القاضي يسألهم عن السبب ولا يقضى قبل السؤال لا خلاف.

497 اسبابها والقضاء لمجهول متزدوان مات الشاهدان ونها عن قبل أن يسألهملا يقضى بشيء كذا في فتاوى راحبة فتاوى عالم الكيرية في الجـ ـ الثالث صفحه 589

71 شهد أابه ابن الميت ولم يشهد أانال نعلم له ونافيره تلوم القاضي في ذاك وتأني قد رمالوكان له وارث يظهر ثم يدفع إليه الهمبات* فتاوى سراجية صفحه 579

196 إذا كان الشهود بارتهن رجل وبينوا بببه ولم يزيد واعله فالشهادة مقبولة إلا ان القاضي لا يدفع المال الى المشهود له للحال بل يتلوم زمانالجوازان بظاهر وارث آخر للميت مزاحم للمشهد له ومقدم عليه هكذا في الذكرة * فتاوى عالم الكيرية في الجـ ـ الثالث صفحه 579

879 إذا قسم الميرات بين الغرما، فإنه لا يؤخذ منهم ككيل ولا مي رواية وهذا شيء احتماط به بعض القضاة وهؤلاء وهذا
(۱۱)

190 ولوفرضننا التركمة في الصورة المذكورة لثلث عشر كانت بين التصحيح والتركمة مبينة فحين يضرب دين صاحب العشرة في كل التركمة فتحصل ماية وثمانون فاذاقسنناهذا المبلغ على كل التصحيح وهو خمسة عشر كنان الخارج وهو ثمانية وثمانون نصيب من كانت له عشرة ويضرب أيضاً دين صاحب الخمسة في جميع التركمة بيبلغ خمسة. ستين فاذاقسنناهذا المبلغ على خمسة عشر خرجت أربعة وثلث وهونصيب من كانت له خمسة * شريفية صنعه ۱۰۲

الباب التاسع في الرد

191 الرد ضد العول مفضل على فرض ذوي الفروض ولا مستحق لهدير على ذوي الفروض وقد رحتهم إلا عليه الزوجين وهو قول عامة الصحابة رض وله اخذ أصحابنا راح وقال زيدابن ثابت الفاضل لبيت المال وبه اخذما للك الشافعي رحم سراجية صفحه ۱۰۸

192 شهد انها وارث لاوارث لغيره لم يقبل حتى يبينا فيقولا لانه أخوه وأبوه وأبنته وعمه وعود ولولو لفول كرائه انه ابنة او أبوه او امه لا يحتاجان الى قوليها انه وارته ولو
في العمل ومجموع الدين ائذى للتصحيح أعلم أن الباقي من الفكرة بعد التجهيز والتفصيل أن وفقي بالديون فلا اشكال لأن كل غريم يأخذ دينه كما وان لم ييف بها مع تعد الغرامات فالطريق في معرفة نصيب كل غريم من تلك الفكرة القاسرة ان يجعل دين كل واحد منهم بمزحة سهام لكل وارث من تصحيح المسألة ويجعل مجموع الدين بمزحة جميع التصحيح ويعمل هنادم فان مات شخص وترك تسعده دنا وكونت عليه لواحد عشرة دنانير ولا خرخصة د نانير وجمعنا الدين صار المجموع خمسة عشر فئرة مزحة التصحيح وبين النسبة والخمسة عشر مثابة بالثلث فذا ضربنا من له عشرة دنانير على الميت في ثلث النسبة حصل ثلثون فذا اقسمنا هذا المحاصل على وفق التصحيح وهو خمسة كان الخارج وهو نسبة نصيب من كانت له عشرة فذا ضربنا من له خمسة دنانير عليه في وفق الفكرة اعني ثلثة حصلت خمسة عشر فذا اقسمنا هذا المبلغ على ثلث التصحيح كما الخارج وهو ثلثة نصيب من كانت له خمسة* شرفيه صفحه 103
فأذا ضربنا نصب الزوج، وهذكى في كل الشركة حصلت ستة وتسعة، فذا قسمنا هذا المبلغ على جميع المسألة وهو تسعة جزء من الخطر، وهو عشرة، وثمانية نصيب الزوج من تلك الشركة فذا قسمنا هذا المبلغ على جميع المسألة وهو نصف، وهو ربع في كل الشركة حصلت مائة وثمانية وثمانية، وعشرون فذا قسمنا هذا الحاصل على النسبة كان الخطر وهو ربع عشرة وتسعة نصيب الأخوات من الأبوين من الشركة المذكورة فذا ضربنا نصب الأخوات، فلم في جميع الشركة بلغت اربعة وستين نصيبنا هذا المبلغ على تسع جزء كان الخطر وهو سبعة وسعة، وسعة نصيبهما من الشركة المفوضة:

187

من صالح على شيء معلوم من الشركة فاقترح مهارة من التصريح ثم اقسم بقية الشركة على شهام الباقين كرشام وعموم فصال حزام الزوج على مايذته من المهرو خرج من البين فيقسم بقية الشركة بين الأم والعم إثنان، وقد فلا مهما وحينئذ يكون شهام للأم وسهم للأم،

188

ولا في قضاء الدية، فديين كل غريم بمثل سهما كل وارث.
وإن كانت بينهما مباينة فاضرب في كل التركة ثم اقسم الانتصار على جميع المسئلة فلا يخرج نصيب ذلك الفريق في الوجهين. سارح صفحة 100.

مثال الموافقة: زوج واربع خوات لا بوم وام وامลา.
لا فصل المسئلة من سنة وتورث إلى تسع فلو فرضنا التركتين كان بين التركة والتصريف توافق بالثلث، فناضر بن ينصيب الزوج من أصل المسئلة وهي يثلث. فذا قسمنا هذا الانتصار على ثلث المسئلة وهي هوثلث. وإياها خرجت عشرة فهمي نصيب الزوج فناضر بن ينصيب الأخوات لا بوم من أصل المسئلة وهو يثلث. في ثلث التركة صاراً ربعين، فذا قسمناها على ثلث المسئلة كأن الخاير وهوثلث عشر نصيبه هواء الأخوات فناضر بن ينصيب الأخوات لا بوم وهو أكثر في ثلث التركة حصل عشرون فذا قسمناه على ثلث المسئلة كان الخاير وهوثلة وثلثان نصيبه هاتين الأخوات.

الشريفى: صفحة 100.

ومثال المباينة أن تفرض التركة في المسئلة المذكورة بين وام واملاً وتكون بينهما وبين التعريج وهوئبة مباينة.
(٧٥)

من التصحيح وهو ثلاثة في كل التركبة تحصل خمسة
وسبعون ثم هذا المبلغ على التصحيح عنثي ثمانية خرج
تسعة دنانير وثلاثة أثمان دينار فهذه نصيب الزوج من
تلك التركبة وأضرب نصيب الام من التصحيح وهو
واحد في جميع التركية يكون الحاصل خمسة وعشرين
فذا قسمتهما على الثمانية خرجت تلثة دنانير وثمان دينار
فهي نصيب الام من التركية وأضرب نصيب كل اخت
من التصحيح وآثاثن في كل التركية تحصل خمسون
فذا نست هذا الحاصل على الثمانية خرجت ستة
دنانير وربع دينار فهى نصيب كل اخت من التركية
شريف

(٧٦)

وإذا كانت بين التركية والتصحيح موافقة فأضرب
سهام كل وارث من التصحيح في وفق التركية ثم اقسم
المبلغ على وفق التصحيح فالخارج نصيب ذلك الوارث
في الموجهين

(٧٧)

أما المعرفة نصيب كل فريق منهم فأضرب ما كان لكل
فريق من إصل المسألة في وفق التركية ثم اقسم المبلغ
على وفق المسألة أن كانت بين التركية والمسألة موافقة
الباب الثامن في قسمة التركة

وإذا كان بينهما مائة فاضرب سهام كل وارث من التصريح في جميع التركة ثم اقسم المبلغ على التصريح

سراجية

181 ذالما إذا خلفت زوجاً وامرأة واختين لاب وام كانت المسألة من سنة وتعول إلى ثمانية فللزوج مئة وثلاثين ولام واحد لكل من الاختين سهماً فإن فرصنا أن جميع التركة خمسة عشرون ديناراً وكان بينهما وبين التصريح الذي هو مائة مباني فإذا أردت أن تعرف نصيب كل وارث من هذه التركة فاضرب نصيب ألبرج
لا تستقيم عليهما وبين رؤسهما وسهامهم سماحة فاحذناء عدد رؤسهما وهواية للجادات ست السدس وهو رعه فلا تستقيم عليهما وبين عددي رؤسهن وهواهم سماحة موافقة بالنصف فأخذنا نصف عدد رؤسهن وهو ثلثة ولبنات العشراثلاثان وهو نسبة عشرلا تستقيم عليهما وبين رؤسهم وهواهم موافقة بالنصف فأخذنا نصف عدد رؤسهن وهو خمسة وللا عمام السبعة الباقية وهو واحد لا يستقيم عليه ويبنوا بين عدد رؤسهم سماحة فاحذناء عدد رؤسهم وهوصدة فصار منهما الإعداد المأخوذة للرؤس اثنا وثلثة وخمسة وسعة وهذا حکاها اعداد مباینة فضربنا الانتي في الثلثة صارستة تم ضربنا هذا المبلغ في خمسة فصار ثلاثين ثم ضربنا الثلاثين في السبعة فحصلت مائتان وعشرة ثم ضربنا هذا المبلغ في اصل المسائلة وهو ربعه وعشرون فصار المجموع خمسة آلاف واربعين ومنها تستقيم المسائلة على جميع الطوافن اذ كانت للزووجتين من اصل المسائلة ثلاث فضريها في المصروف الذي هو مائتان وعشرة فحصلت ست مائة وثلاثون فلبايک واحدة منهما ثلاثمائة وخمسة عشر وكانت للجادات ست أربعة
فجعلت مائة وثمانون ثم نصبنا هذا المبلغ الثالث في إصل المسألة: ١٠٣ فربعة وعشرين صار الحاصل أربعة آلاف وتسع وعشرين وعشرين فما نسبهما نصب المسألة: ١٠٤ فربعة وأربعمائة وثمانون فضرواها في المضروب وهو مائة وثمانون فجعل مائة خمس مائة وأربعون فما فك من الزوجات الأربعة مائة وخمسة وثلاثون كانت للبنات الثمانية عشر ستة عشر وقدضرناها في ذلك المضروب أيضا فصار الفين وثمان مائة وثمانين فك فما منهن مائة وستون وكتاب للجداد الخمس عشرة أربعة وقدضربناها في المضروب المذكور فصار سبعونات وعشرين فكل منهن ثمانية وأربعون وعشرين للعما السانتة واحد فضربناها في المضروب فكان مائة وثمانين فكل واحد منهم ثلاثون.

سراجية وشريفي: صفحة ٩١

و لا أراه ان تكون الأعداد متزابنة لا يكون بها بعضها بعضه.

فإذا ان ضرب احد الأعداد في جميع القيم ثم ما بقي في جميع القيم فما توفر في جميع القيم ثمما ما اجتمع في إصل المسألة كأعدادين وست جدات وعشر بنات وسبعة إعما،

إصل المسألة أربعة وعشرون فلزوجتين الثمانين وزوجتين
فصل المشكلة أربعة وعشرون للزواجات الأربع التالية:

- فالبنتان لا يقبلن عليهما عدد يهم سهم ورؤسهم بسعة معاينة.
- فحفظنا جميع عدد رؤسهم وللبنتان الثانين عشر
- وسهام مشتركة بالنصيف فامتدت نانصيف عدد رؤسهم
- وهو متساءل وحفظناها للجدة الخمس عشر والسادس وهو
- أربعة ثلاثينملا عليهم وبين عدد يهم رؤسهم وسهامهم
- معاينة فحفظنا جميع عدد رؤسهم للعام السنة الباقين
- وهو واحد لا يستحق عليهم وبين وبين عدد رؤسهم معاينة
- فحفظنا عدد رؤسهم فاتصل لنا اسم أعداد الرؤوس المحفظة
- أربعة وستة وتسعة وخمسة عشر وثناء طلبا بينهما وبين
- الأربعة والستة التوافق نوجدناا لا رابة موافقة للسنة
- بالنصف فردنا الواحد نهما نصفيها وضربنا في الإخري:
- صار المبلغ اثني عشر وفصولاً للتسعة بالاثنين
- ثلاث احتما في جميع الأخر صار المبلغ ستة وثلاثين
- وبين هذا المبلغ الثاني وبين خمسة عشر ودعاة بالاثنين
- أيضاً فضربنا ثلاث خمسة عشر ودعاة في ستة وثلاثين
عدد الروؤس سه وسها مه مباينة فالخذا عدد الروؤس وهوربة والعمار الباقى وعسيم فلا تستقيم عليه اثنين عشر يل بينهما تباین فالخذا عدد الروؤس باسره ثم طبنا النسبة بين عدد روؤس المالخوحة وعدد الثلاثة والأربعة متداخلين في اثنين عشر الذي هو أكثر عدد الرؤس فضربناه في اصل المسألة وهوايضا اثنين عشر فضربناه بعمة واربعين فنصم منها المسألة ان كان للجداول من اصل المسألة اثنان وقد ضربناهما في المضرب الذي هو اثنان عشر نصراً واحدة وعشرين فكل واحد منهن ثمانية والزوجات من اصل المسألة ثلاثة ضربناها في المضرب المذكور صاربمئة وثمانية فكل واحد منهن سبعه واربعة والثمانون فكل واحد منهم سبعه * ارضية وثريفيز* صفحه 89 والثالث ان يوافق بعض الأعداد بعض الأعداد فيها ان يضرب وفق اعداد الثلاثةان في جميع الثلاثي ثم ما بلغ في وفق الثلاثي وافق النانث والاقل بلغ في جميع الثلاثي ثم في الرابع حکم نسم المبلغ في اصل المسألة مراحه
الثلث السدس وهو واحد لا يستقيم عليه ولا موافقة بين الواحد وعدد روسه فأخذنا جميع عدد روسه وهو أيضاً ثلثة ولا عمام الثلثة الباقية وهو واحد أيضاً وبينه وبين عدد روسه مباينة فأخذنا جميع عدد روسه ثم نسبناه هذه الاعداد لما خروذه بعضها إلى بعض فوجدناها مماثلة فضربناها ووثلثه في اصل المسألة على المستفشارت ثمانية عشر فمئة تستقيم المسألة ان قد كانت للبانات اربعة ضربناها في المضرب الذي هو وثلثه فصار ثلث عشر فكل واحدة منهم اثنان وللجدات واحد ضربناها اضافي ثلثة فصار ثلاث فكل واحدة واحد وللإعا ما واحد اضافي ضربناه في الثلثة اضافا واطننا كل واحد منهم واحداً

مراجع وشريفين صفحة 88

والذي án يكون بعض الأعداد عند الإخلافي البعض فحكم فيها ان يضرب اكثر الأعداد في اصل المسألة كربع زوجات

وثنفت جادات واكثر عشر مما اصل المسألة من اثنى عشر للجدات الثلث السدس وهو اثنان فلا يستقيم عليه وبين روسه وماهما مباينة فأخذنا جميع عدد روسه وهو ثلثه و الزوجات الثلاثة وهي الربع وهو وثلثة فلا استقامة بين...
صارست عاطلبنا كل واحدة منهن أثناه فرشية صفه

١٧٤

١٧٥

كروج وخمس أخوات لأب وأم ففصل المسئلة
من ستة النصف وهوثلثة للزوج وثلثان وهو ربعه
للأخوات فقد عالت المسئلة الي سبعة وانكسرت
سهام الأخوات عليها فقط وبين عددى سهامهن
وروئسهان اعني الإربعة والس chảy سببين فضرنبرا كل عدد
روئسهن وهو خمسة في اصل المسئلة مع علها وحوسوبة
فصار الحاصل خمسة وثلتين فمنها تتصح المسئلة إذ كانت
للزوج ثلثة وقد ضربناها في المضرب وهو خمسة فصار
خمسة عشرون كانت للأخوات الخمسة أربعة وقد ضربناها
ايضًا الخمسة فصار عشرين فكل واحدة منهن أربعة
سراجة وشروقية

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١٧٧

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١٧٧

وأما الرابعة فاحدها أن يكون الكسر على طائفتين أو أكثر
لكن بين عداد رؤسهم سببين مما تائة فأحكم فيها أن يضرب أحد
العددا في اصل المسئلة مثل سببنت وثلاث جدات
وثلثة آعم المسئلة من ستة البنات الست الثلاث وهو
اربعا لا تستقيم عليهن لكن بين الإربعة وعدد رؤسهن
موافق النضف فأخذنا نصف عدد رؤسهن وثلاثة للجدات
المستقبل صار الحاصل ثلثين فتشبه من حيث المستقلة إن كان للأبوين من أصل المستقلة نهما وقيد ضربناهما في المضروب الذي هو خمسة صار عشرة فكل منها خمسة وكدّنت للبنات منه أربعة وقيد ضربناها إضافيا خمسة فصار عشرين فلكل واحدة منهن اثنان

سراجية وشروق

صفحة 14

والتالث إن لا تكون بين سهامهم ورؤسهم موافقة فيضرب حينذاك عدد رؤس من انكسرت عليهم السهام في أصل المستقلة

سراجية

صفحة 16

ومثال فير العائلة زوج وجدة وثلاث أخوات لام كلها سمة للزوج منها نصفها وهفيلة وانشقها وهو واحد للاخوات ثلاثة وحواثان ولا يسمى على عدد رؤس سهم وليست بين عددي رؤسهم ومها مهان موافقة بكسر بل بينهما مباينة قصرناكل عدد رؤس الأخوات في أصل المستخلص صار الحاصل نمنية عشر فنصم المستقلة منها إذ قد كانت للزوج ثلاثة ضربناها في المضروب الذي هو ختمتها نسعة وضربنانصيب الجدة في المضروب اضافا كل ثلاثة وضربنانصيب الأخوات لا في المضروب
الباب السابع في التصحيح

171. يحتاج في تصحيح المسائل إلى سبعة أصول ثلاثة منها بين السهم والرؤوس وأربعة منها بين الرؤوس والرؤوس. أما الثالثة فانها فكم ستة سهم: كل فريق منقسم عليه فلا كسر ولا حاجة إلى الضرب كابرين ببنين فان المسيلة حينئذ من سهان فلك واحد من الأبوين سدسها وهو واحد للبنين الثلاثة اعني أربعة فلك واحد منها اثنان فاستقامت السهام على رؤوس الأروقة بلانكسار* سراجية وشريفة صفحه 172. والثاني أن يكون على طائفة واحدة نصيبهم ولكن بين سهما مريم ورؤوسهم فإنه فضفاض واضح عدد اثنان من اسكرت عليهم السهام في أصل المسيلة وعليها إن كانت عائلا كابرين وعشر بنات ار زوج وابوين وست بذل فالو مثال ماليس فيها بول اذن المسيلة من ستة السدسان وهماثان لابوين ويسقيبان عليهما والثاني وهماربنة البنات العشروا يستمقيم عليهن لكن بين الا ربعة والعشرة موافقة بالنصف فإن العدد العاد لهما هو اثنان ترد ناد عدد الرؤوس اعني العشرة إلى نصفها وخمسة وضربنها في ستة التي هي أصل
كر ق خاختن لاام وااجمع نصف وسدس كروج
واخت لاام واخت لاام واخت لاام واخت لاام وتعول بينها
إلى ثماني ف اذا اجتمع نصف وثلثان وسدس كروج واختن
لاام واام وااجمع نصف وثلثان وثلث كروج واختن لاام
وام وااختن لاام وتعول بنصفها الى تسعة اذا اجتمع نصف
وثلثان وثلث كروج واختن لاام واام واختن لاام وااجمع
نصف وثلث وسدس كروج واختن لاام واام واختن لاام وااجمع
لاام وتعول بينها الى عشرة اذا اجتمع نصف وثلثان
وثلث وسدس كروج واختن لاام واام واختن لاام
*سراجية وشريفية
صفحة 171
118
وام اثنا عشر ف هي تعول الى سابعة عشر وترابلما
اي تعول بنصف سداسها الى ثلث عشر اذا اجتمع ببع
وثلثان وسدس كروج واختن لاام واام واختن لاام وتعول
بربعها الى خمسة عشر اذا اجتمع بربع وثلثان وثلث كروج
واختن لاام واام واختن لاام وااجمع بربع وثلثان
وسدان كروج واختن لاام واام واختن لاام وتعول
بربعها وسداسها الى سابعة عشر اذا اجتمع بربع وثلثان
وثلث كروج واختن لاام واام واختن لاام وام سراجية
العول إن بزاد على المخارج شيء من أجزائه إضافت
عن فرض صراحة

علم ان مجموع المخارج جسبعة أربعة منها المعاون وهي
الثلثة والأربعة والثمانية * صراحية صفحه 76 و 77
 فلا عول في الثلثة لأن الميئة ما تكون من اثنين
اذ اكان فيها نصفان كزوج واخت لاب وام ونصف
ومابقي كزوج واخت لاب وام ولباقي الثلثة من المخارج منها
ا ماثل ومابقي كثام واخت لاب وام وأماثلا ومالابل
كابني واخت لا ب وام وإثاث ث ولثان كأختين لا وكابن
لاب وام ولباقي الأربعة لا أن مالمجاير منهما أهرب ومالابل
كزوج وابن أربع ونصف وماابقي كزوج ونبت
واخت لاب وام أربع وثلث ماابقي وماابقي كزوجة وابن
ولا في الثمانية لا أن المخارج منها أما ثم وماابقي كزوجة
وابن أربع ونصف وماابقي كزوجة ونبت واخت لاب
وام فلا عول في شيء من مسائل هذه المخارج الأربعة *
تفرده

ثالثة منها قد تعال لام الستة فانها تعول إلى عشرة و ترا وشفا
اي تعال بسدسها إلى سبعة فيما إذا أجمع نصف وثلثان

167

166

165
الباب السادس في خارج الفروض وفي العول

188

اً عَمَّان الفروض السنتة المذكورة في كتاب الله تعالى

نوعان الأول النصف والربع والثامن والثاني الثلثان والثلث

والسدس على التضيف والتصنيف * سراجية صفحه 18

فإن جاء في المسائل من هذ الفروض أحدها مخرج

كل فرض سمعه إلا النصف وهو من أثين كأر بعس أربعة

والأمس من ثمانية والثلث من ثلثة * سراجية صفحه 19

وإن جاء من ين وثلث وهما من نوع واحد فكل عدد

يكون مخرجًا لجزء فذلك العدد إيا مخرج لضعف

ذلك الجزء وضعفع ضعفع كالسنتة هي مخرج للسس

ووضعفع وضعفع * سراجية صفحه 20

وإن اختلط النصف بكل الثاني أو بعضه فهووس ستة

* سراجية صفحه 21

وإن اختلط الربع بكل الثاني أو بعضه فهووس إثني عشر * سراجية صفحه 22

وإن اختلط التأثيم بكل الثاني أو بعضه فهووس أربعة

وشرين * سراجية صفحه 23 و 24
في المبسوط فإن الها ملكية

وآخرين العصبات صيغة العناقة سراجية ص فصله

186

تم عصبة هي عصبة مولية العناقة على الترتيب الذي ذكرناه في العصبات فتكون عصبته النسبية مقدمة على عصبته السببية. فهي عصبة الممنت وهو المراد بعصباته النسبية ما هو عصبة بنفسه فقط كما سترى وترتيب بين هولاء العصبات مامرفك، ابن المعتقل أولى عصابته، ثم ابن ابنته وان سفل ثم أبوها. ثم جدة وان علالى آخرها. فصل هنا ك سراجية وشروفي ص صفحه

184

ولا شيء منه للإناث من رزخة المعتق لقوله عليه السلام ليس للنساء من الولاء سراجية ص فصله

185

واوتركت أي المعتق إبالمعتق رابحة كان عندي يوصف رح سل الولد لنان والباقي للابن هذا قوله الخبر هو أحدث الرؤبات عن ابن مصعود وعده قال شريف والخنفي. وقد ابني حنيفة وعمحمد رج الولد كلابين سراجية وشروفي ص صفحه
مقدم على ابن عمهفلا ب سراجية وشيريفية صفحة 48
181 وقرب العصابات البنون ثم بنوهم ثم الاب ثم الجد ثم الاخوة ثم بنوهم ثم بنو الجد وهم الاب ثم بنوهم ثم بنو الجد وهم الاب ثم بناجبيه لمتت بنو القصب ثم بنوهم وقرب العصابات بنفسها الى الميت بنوالصلب ثم بنوهم واءن عائلالم الا ب وام ثم ال الخالاب ثم بنو المخالاب وام ثم بنوالا الخ لاب ثم بنوهم هكذا ثم العم لاب وام ثم العم لاب ثم بنوالعم لاب وام ثم بنوالعم لاب ثم بنوهم عل على هذا الترتيب ثم عم الاب لاب وام ثم عم الاب لاب ثم بنوهم على هذا الترتيب فافهم فتاوئ سراجية صفحة 68
182 فاقرب العصابات الا ابن ثم ابن الا ابن وان سقل ثم الاب ثم الجداب الاب وان عاليهم الخالاب وام ثم الاخ لاب ثم ابن الاب لاب وام ثم ابن الاب لاب ثم العم لاب وام ثم العم لاب ثم ابن العم لاب وام ثم عم الاب لاب وام ثم ابن العم لاب ثم عم الاب لاب وام ثم ابن ع الاب لاب ثم عم الجد هكذا
وان سفلواتم جزء جدة ای الاعمام ثم بنوههم وان سفلوا
سراجهم

1167
نم يرجكون بقوة القرابة اعني به ان ذا القرانيين أولى
من ذي قربة واحدة سراجهم

1168
cالأخ لاب وام والاخت لاب وام اذا صارت عصبة
مع الابت أولى من الاب لاب والاخت لاب
سراجهم

1169
الرابع جزء جدة في قدم في هذه الانصاف والمدرجین فيها
القرب للقرب شريفة وسراجهم

1169
وقد تلك الحكم في الاعمام البیت ثم في الابه وثن في اعمال جدة
اي يعتبرین هولاء الانصاف من الاعمام قرب الدرجة ولا
قوة القرابة رايناها مع الممث مقدم على عم ابته المقدم على
عم جدة وذلك قرب الدرجة وفي كل واحد من هذه الانصاف
يدم ذوا القرابین على ذي قربة واحدة مع التساوی
في الدرجة فم الممث لاب وام أولی من عم لاب وکذا
الحال في عم ابته وعم جدة وفی هذا الحكم في فروع هذه
الانصاف يعتبرونقرب الدرجة راینا قوة القرابة فابن
عم الممث مقدم على ابن ابیه وابن عم الممث لاب وام
معهن اخ لا ب فيصبهن والباقي بينهم للذكرمثل حظ
الإثنين سراجين صفحه 30 و31

والسادسة ان يصرن عصبة مع البنات او بنات الإبن
لما كنا سراجين صفحه 48 و49

واما الولد والاب عم فاحوال ثلث السدس للواحد والثلث
للإثنين فصعدا ذكورهم وناناتهم في القسمة والاستحقاق
سواء ويسقطون بالولد وولد الاب او ابن سلف وابلا ب
والجد بالاتفاق سراجين صفحه 32 و33

الباب الخامس في العصبات

العصابات النسبية ثلث عصبة بنفسة وعصبة بغير وعصبة
مع غيرها سراجين صفحه 59

اما العصبة بنفسه فكل ذكرانتدخل في نسبته الى الميت
انتى وهم اربعة اصناف جزء الميت واصله وجزء ابنه
وجزء جده سراجين صفحه 60

اللترو فاقرب اعني به الاولى بالمائرات جزء الميت
اي ابنون ثم بنوهم وان سلفوا اصله يا الاب ثم الجد
اي الاب لا يوان علاهم جزء ابنه يا الاخوة ثم بنوهم

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قال الإمام السروخي رح لابن الرأي من ابن حنفيح
في صورة تعدد قرابة أحدى الجديين وذكر في فائض
الحسن ابن عبد الرحمن ابن عبد الراو الذاشي من
صاحب الشافعي رح أن قول ابن حنفيحة مالك والشافعي
سكت ابن يوفه رحم شريفة حاء ١٥٨
والملاخلاوت لاب وام فاحول حسب النص للفواحة
والثالثان للاثنين فصادة ومع الاخ لاب وأم للذكر مثل
حظر الأثنين يكون عصبة بلاستواهم في القرابة إلى الميت
سراجية حاء ١٥٩
* والوالاءءن والعلات كلهم يسقطون بالاب وأب ابن ابن
وان سنو لاب لاب لا تفاق وبالجد ابن ابن حنفيحة رح
سراجية حاء ١٥٩
ولكن الباقى مع البنات وابنات ابن لقوله عليه السلام
اجملوا الأخوات مع البنات عصبة سراجية حاء ١٥٩
والأخوات لاب كالأخوات لاب وأم ولهن أحوال
سبع النص للفواحة والثالثان للاثنين فصادة عند عدم
الأخوات لاب وأم ولهن السدس مع الاخت لاب وأم
تكملة للاثنين ولا يشتم مع الاختن لاب وأم أنا يكون
(38)

الجدة السدس ألا لم كانت أولاب واحدة كانت أخرى
اذكى تابعات متعاديات في الدرجة * سراجية صفحه 62
ويستقت كان بالاً ما الأم مومات فنجد إلالتها بالاً
وأصحاب السب الذي هوالاً مومة وأما الإموات
فلاتقاد السب وحده وتستقل الإموات دون الإموات
أيضاً بالاً * سراجيـة شريفية صفحه 63
والقريـب من أم جهة كانت تصحب البعدة من أم جهة كانت وراثة
كانت القريبة أو سجوبة كام الاب عند وجوده فنها سجوبة
ومع ذلك ت صحبت أم الاب فله هذه الصورى لدى أن يخلص
الأمي الاب وام الاب وام الاب يكون المال كل للاب
عند نالاة البعيدة سجوبة بالقرب والقريب سجوبة
بالاً * سراجيـة شريفية صفحه 64 و65
وذا كانت الجدة ذات قربة وحيدة كام ام الاب
والآخر ذات قربة أواكتر كام ام الاب وهي أيضاً
ام الاب * سراجيـة صفحه 66
يقسم السد من بينهما اضدادي * يوفسي رح انصافاً ببعبمار
الابدان وعند * سراجيـة إلالاً بابسب الأجهات
سراجيـة صفحه 67
ويستقل الجد بالاب لان الاب اصل في قرارة الجد
الي الميت * سراجية

139 والجد الصحيح كلا في لبي اربع مسائل الأولى ان ام الاب
لا ترث معا وترب مع الجد الثانية ان الميت اذا ترك
الابيين واحد الزوجين فلا مثلك مافيه ما بقي بعد نصيب احد
ال الزوجين ولو كان مكان الاب جد فلما ثلث جميع
المال اثنان ابي يوسف رح فان لها ثلث الباقى ايضا
* سراجية وشريفية

140 واماملا لفاح أول ثلث السدس مع الولدة ولدا الاب
وان سفل اولاثنين من الأخوة والأخوات فصاعدا

141 وليا عليه تعالى قال فان لم يكن له ولد ورثة أبوه فلا حمه
ثلث فان كان له خوة فلا حمه السدس والمراة من صدر
الكلام ان لا حمه الثلث والباقي للاب فذا الخان في آخر
كانه فيل فان كان له خوة ورثه أبوه فلا حمه السدس
ولاية الباقى * شريفية صفحه 77
جمهور العلماء شريف
ولا يتن من الصليبيين إلا أن يكون بعد تائه
واسفل منهن غلام فيصبيان والباقي بينهم للذكر مثل
حتى الإنتين سراجية
ولفظ السدس بالوحدة الصليبية تكملة اللتين
سراجية
ولنا هذه الإنتين لم تكن في درجة الذكر تصارب بعصبة
وأنا كنت أقرب منهم كانت بذلك أولى شريفة
ولا شيء للسفيان إلا أن يكون من بأل غلام فيصبين من كنت
بجدية فيه لم كانت توجد معه لم يكن ذاك تمام لها جد
سهمها ولا صبره عصبة سراجية وشريفة
امالاب نله أحوال ثلث الفرض المطلق وهو السدس
والذي مع ابن أوابين الأبن والсроч والفرش والوعيب
معاً كذلك مع ابن دبة أوابين الأبن والсроч والوعيب
المجذوذين وذلك عند عدم الوالد ولدلا ابن وأبن سلف
سراجية
والجذب الصريح هو الذي لا يدخل في نسبته إلى الميت
سراجية
سراجية
وان سفل* سراجين* صفحه ٢٤٨
وأمل البنات الصلب فاحوال نصف تلك النصف إلى الواحدة والثلاثان للثانيتين فصاعدًا مع الأثنين للذكور مثل حظ الأثنين وهو بصبهن* سراجين* صفحه ٣٤
لقوله تعالى: يوصيكم الله في ولزكم للذكور مثل حظ الأثنين فإن لم يقم بينه وبين البنت على ما في نصب البنات عندنا لاجتماع مع البنت دل على أنه يصببهن* وان المال يقسم بينه وبين البنت على ما ذكرناه من القسمة بِطريق العصبة* شريفة صفحه ٣٤
وبنات الأبناء كبنات الصلب لهن احوال نصف للواحدة والثلاثان للثانيتين فصاعدًا عند عدم بنات الصلب* سراجين* صفحه ٢٤٧
هذه حالة الثالثة من الثلاث الأولى فإن بنات الأبناء إذا كان يصببهن* ولا م سواء كان اخاهن أو ابن عمهم فانه بصبهن كبان الأبناء الصليبي يصب البنات الصليبية.
ونذلَك لأن الذكور أولاد الأبناء يصب البنات اللاتي في درجته إذا لم يكن لمين ولد صليبي بالإتفاق في استحقاق جميع المال فقد يصبها في استحقاق الماتي من الثلثين مع الصليبيين والبنت ذهب عامة الإجربة واله
والربيع والثلث والثلثان والثاني والثاني والثالث والثامن وصاحب هذه السهام
اثنتي عشر تقريباً عرفت من الرجال وهم الأب والجد الصبيح
والابن لا يقتضى لنا في هذا ما يقلل من نسبتهما على المبتل والبنت وبيت
الأب وان سلفت والاخت لا ب وام والاخت لا ب
والاخت لا ب وام والأم والجدة الصبيحة وهي التي لا يدخل
في نسبتها على المبتل جدافاس* سراجية صفه ١٩٠٠ ص ٦١٠

والربيع فإن فريق على المبتل لا يقتضي لهم من الأبشر البنت وهم ساهم والاب
والزوج لا ب وام والأم والزوجة فريق برئون بحال وبيته برئون بحال
أخير وهم غيرهم لون الأبناء من الأصلة سواء كانوا عصبات
أو ذوي فروض وهذا يعنى على ٣ من بينية إذا كان من كل من
كما في المبتل بشخص لا يبرئ مع وجود ذاك الشخص سوي
ولا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا لا ل
وينبغي أن يطلق إداة الشهادة ولا يفسر DAM اذان القاضي أن يشهد بالسامم لم يقبل شهادته كما أن معاينة اليد في الأملات مطلق للشهاده ثم إذا فرسلا تقبل كذا هذا ولوراه لا نسنا جلس مجلس القضاء يدخل عليه الخصوم حل له أن يشهد على كونه قاضياً فإذا رأى رجل وعلى رجاء يسكن بينه وبين كل واحد منها أو آخرين نسا الطاروج كم إذا أشار إياها في بلد غيرة لها هداية صفحة 89 وإذا رأى رجل ومرأة يسكن بينه وبين كل واحد منها إلى الآخرين نسا الطاروج جاز له أن يشهد بأنها امرأة فأن سأله القاضي هل كنت حاضراً فقال لا تقبل شهادته فلا يحل له أن يشهد بالسامم مع كما شهد بامهات المؤمنين أزواج النبي صلى الله عليه وسلم فعلي الروية الأول والثاني لا تقبل إلا ما قال لم يعينوا العقدتين للقضاء إنه يشهد بالسامم وقيل لا يشهد إلا ما سمعت لا تقبل فكذا هذا *منحة الجحيم* الدل الأول صفحة 300

الباب الرابع في خصوة الفروض ومستحقيها الفروض المقدرة في كتاب الله تعالى سنة الصي
القين والمعبدي والمكتوب ولا بحضرت المجنين والصبيان
ولانحضرة الكفر في نكاح المسلمين هكذا في البخاري رأي 
فتأوي عامة الجليل والجلال الأول صفحة 777
وتصبح بشهادة الفاسقين ولا العيدين هكذا في فتاوى
فاضيخان وکذا بشهادة المحدودين في القذف وإن لم يتوب
کذا في البخاري رأي وکذا يصبح بشادة المحد ودین الزاهد
فی الخلافة فتاوى عامة الجليل والجلال الأول صفحة 777
ولايجوز للشاهدان يشهد بشيء لم يعالنه إلا النسب
وموت ونكاح والدخل والولاية القاضي فإنه يسعه
ان يشهد بهذه الأشياء إذا الخبرة بها من ثقيبه ونسبة
استحسان ويشترط أن يكون بذلك رجلان عدلا ورجل
وامرأة من ثقيبه يقع في قلبه صدقهم ويشترط أيضا
ان يكون الإخبار بلغ الشهادة هكذا ذكره العلماء وقبل
في الموت يكتفي باخبرة واحدا مرجع والامرأة واحدة لأنه
قل ما يشاهد حاله غير الواحد إذا الإنسان يهبه ويكره
ولاکذلک النکاح والنسب وينبغي أن يطلق اداء الشهادة
ولا يفسرهما إلا أنفسهما للقاضي بإن قال أي إشهد بالتسليم
لم تقبل شهادته * الجوهرة النيرة في كتاب الشهادات
وقد هذا عندهما* عناء في الجلاد الأول وصفة ۱۱۸
ولواء الغلام اناصدة بعد مومته صمَّم تصديقه وثبت
نفسه منه لأنه النسب لايطل بالموت وكذالك وافترزوجه
ثم ما ت فصدقته بعد مومته جاز لأن حقوق النكاح بقية
بعداً بالموت وهي الغدة ولما كانت هي المقرة بالزوج
ثم فصدتها بعد مومته لم يص تصديقة صنداً من حقيقة
لا أن النكاح زال بالموت وزالت أحكامه فلم يجز تصديق
قال أبو يوسف ومحمد صم تصديقه لآن المسلمين ثابت
وهو من أحكام النكاح* الجُهُور النيرة في كتاب الإقرار
الزنايثب بالبينة والإقرار فالبينة إن تشهد أربعة من
الشهود على رجل ومرأة بالزنا* الهدية صفحه ۱۳۸
ولا ينعقد نكاح المسلمين إلا الحصول شاهد بين
حرمين عاقلين بالغين مسلمين رجلين ورجل وامرأتين
عدو لا كانوا أو غير عدول أو صهودين في الذذاف* 
الهدية صفحه ۱۴۰
ومنها الشهادة قال عامة العلماء إنها شرط جواز النكاح
هكذا في الباء ع وشرد في الشاهدة رابعة أمور عربية والعقل
والبلغ والإسلام فلا ينعقد بعضاً العبيد ولا أفرق بين
ولا يقبل اقرارها بالولد إلا أن يصدقها الزوج ويشهد بولادتها قابلة يرث به إذا كانت مزوجة. وفي عدة من تزوج ماما إذا لم يعرف لها زوج ثبت نسبته منها وأن لم يقبل اقرارها بالولد إلا أنها تحمله على غيرها فلا يصدق فان صدقها الزوج قبل اقرارها وإذا ذكرت بولادتها قابلة فإن الولادة ثبت بشهادة امرأة واحدة إذا تثبت الولادة منتظمة نسبته فلما الحاصل أنه بجوز اقرار المرأة بثلثة الزوج والمولى والإب لا غير في ظهر هذا أن بالوالدين وقع سوء إلا أنه يقع التنافض لأن لوصم الإقرار بالأنام وذل ذلك يتوقف على تصريحها فيكون نص يقها بمنزلة اقرارها بالولد ودك بعد هذا أن اقرار المرأة بالولد لا يقبل بالجوهرة النيرة في كتاب الإقرار. 
وبصص التصديق في النسب بعدموت المقررات مما يبقى بعد الموت وكذا تصريح الزوجة بالزوجية بعدموت الزوج المقر بالاتفاق لا حكم للناصق وهو الواحد فانه واجبة بعد الموت وهكريم أن آثار الكواح الأدريئ انها تلغسه بعد الموت لقيام الناكح وكذا تصريح الزوج بعد موتهان الارث من اججام الكواح وهوما يبقى بعد الناكح والعودة.
والموالي يعني مولى العناقة سواء كان على أو لم يحل جائز سواء كان اقراره بهولاء في حال الصحة أو المرض لأنه اقر بما يلزمه وليس فيه تحمل النسب على الغير تحقيق المقتضي وانتهى المانع فوجب القول بجوازة عناية في الجل*** الأول صفحة ۱۱۱

ويقبل اقرار المرأة بالوالدين والزوج والموالي لا نذلك معنى بلزمة نفسها ولا تحمل على غيرها الوجوه البيرة في كتاب الإقرار

ويقبل اقرار المرأة بالوالدين والزوج والموالي لما بينهانه اقرار بما يلزمه الخ وقال في المسوع اقرار المرأة يصح بتلثة نفر بالاب والزوج وموالي العناقة والامري في ذلك ما ذكرنا عناية في الجل*** الأول صفحة ۱۱۱

ولا يقبل بالولد لأن فيه تحمل النسب على الغير وهو الزوج لا النسب منه قال الله تعالى ادعوهم لآبائهم وعليهم الإجماع إلا أن يصدقها الزوج لأن الحق له اشتكي القابلة بالولادة إذا الفرض أن الفراش دائم في حيل إلى عين الولد وشهادتها في ذلك مقبولة عناية في الجل*** الأول صفحة ۱۱۱
قد يطلق به حق من ثبوت نسبه فلا يملك نقله عنة وشرط
ان يولد مثله لنقله لكي لا يكون مكدبًا في الظاهرة* الجوهرة
النيرة في كتاب الإقرار
صدقه الغلام، هذا إذا كان يعتبر عن نفسه وكان عاقلًا
أما الصغير فلا يعتبر إلى تصديقه وسواء صدقه في حيوي
المقراً وبعد مومته* الجوهرة المبرعة في كتاب الإقرار
ومن أقرب الغلام، يولد مثله وليس له نسب معروف
انه ابنه وصدقه الغلام ثبت نسبه وان كان مريضاً
ويشارك الورث في الميراث، لأن إقراره بالبنوة معني
الزمن نفسه ولم يحمله على غيره فلازمه* الجوهرة النيرة
في كتاب الإقرار
ويجوز إقرار الرجل بالوالدين والولد والزوجة والمولى
لأنه ليس فيه تحميل النسب على الفيرو يعتبر تصديق
سكل واحد منهم بذلك وأمان كان الولد لا يولد مثله للملك
لا يصح دعوة سواء أصدره الإبن أو لم يصدره أقام البيئة
وليثيم الاستحاله ذلك* الجوهرة المبرعة في كتاب الإقرار
ويجوز إقرار الرجل بالوالدين هذايان ما يجوز
الإقرار وما لا يجوز إقرار الرجل بالوالدين والله والزوجة
بوقعى أبيه أو أمه أو بعشيَّة إما أو بعشيَّة لم يثبت نسب مائدة بعد ذلك إلا بالدعاء كذا في الاختيار شرح المختار الثالثة إلا ما إذا جاءت بولدها. يثبت النسب بدون الدعوة عندنا كذا في ظهيرية審* فتاري عا المكرية في الجل*عالم الأول الصنع ٦٣٠

إجراء الإقرار بالولد مثل شرائط أن يكون يولد مثله مثلاً كلام ككعابي الظاهر أو أن لا يكون الولد ثابت النسب فلوك كان لا متنع نبوته من غيرة وان بصدق المقرب في الإقرار إذا كان يعبر عن نفسه فإنها في نساحه بخلاف الصغير الذي لا يعبر عن نفسه على مالوري باب دعوى النسب ولا يمنع الإقرار بسبب المرض لأن النسب من الهواج الإصلية وهويزمه خاصة ليس فيه تحميله على الغير فينثت وإذا أثبت كأن لوارث المعروف فيشاره ورثته عنابة في الجلد الأول صفح ٨١٤

ثم المقران كان مرألاً بدلاً يكون سناً كرمته بمسع سنين ونصف وان كان رجلاً لا بد لأ يكون سناً كرمته باتئي عشرة نصف ونصف الجوهيرة النيرة في كتاب الإقرار وليس له نسب معروف لأن من له نسب معروف ٩١٥
لا إذا صدقنا المشترى فإن جهته لا أكثر من ستة أشهر من وقت البيع ولاقل من سنتين لم تقبل دعوة البائع فيه إلا أن صدقنا المشترى* الهـيدادية صفحة ٢٣٩ قال أصبهانة لثبت النسب ثلاث مرات واحدها النكاح الصحيح وماهوي معناه من النكاح الفاسد والحكم فيه أنه بثبت النسب من غير دعوة ولا ينتفي بجرد النفي وإنما ينتفي بالععان فأن كأمام لا عيان بينهما إلا ينتفي النسب للولدما في المحيط والثانية أهمل والحكم فيها أن يثبت النسب من غير دعوة وينتفي بجرد النفي إذا في الظهرية ون كرفي النهاية معزا إلى المبسوط إذا لم يملك نفسه ولديه القاضي به أولم يبطل ذلك فإنه إذا أفسد به فقد لزمه على وجه لا يملك إبطالة وكذا بعد التثالول إذا في التبين في باب الاستيلاد قالوا نما يثبت النسب ولداً ولد بعد الدعوة أن كان يحل الوصى وطليها إلا إذا كان لاتحل فلا يثبت النسب بدون الدعوة كما ولد كانهما مولاهما وامة مشتركة بين اثنين استولدهما ثم جاءت بولد بعد ذلك لا يثبت النسب بدون الدعوة كما في الظهرية وكالوحرم وطليها عليه بعد ذلك.
المؤذون له وطليبه نبي وراء ورقيه ووطني التجارة المهمة قبل التسليم في حق الزوج ووطني التجارة المشتركة بينه وبين غيره هكذا في التبيين فتاوى عالم الكبيرة في الجلالة الثاني صفحه 79

وأذا تزوج الرجل امرأة فاجأت بالولد فلا يقل سنة اشهر من يوم تزوجها لم تثبت نسبه وإن جاءت به لستة فتاوى عالم الكبيرة في الجلالة الأول صفحه 25

ولوزنها بمرأة فحملت ثم تزوجها فولدت إن جاءت به لستة اشهر فصاعد اثبتت نسبه وإن جاءت به فأقل من ستة أشهر لم تثبت نسبه إلا أن يدعه ولم يقل أنه من الزنا أما أن قال إنه صني من الزنا لا يأتيت نسبه ولا بره منه كما في البابي فتاوى عالم الكبيرة في الجلالة الأول صفحه 737

وإذا اع جارية فجاءت بولد فداء منه البائع فإن جاءت به لأقل من ستة أشهر يوم باع لها فهواً للبائع وأمها ولده تفسح البيع فيها ورداً الثمن وإن اذه البائع المشتري مع دعوة البائع أو بعد دعوة البائع الأول وإن جاءت به لا أكثر من سنتين من وقت البيع لم يصنع ذموق البائع.
(305)

وذا القائم دليل الحلال في المأكل وامتنع عبادة في الخلف ولا يتوفر تيوثبها على ظن الجزائي
ودعو الحلال فألعد بضمن النورين ونسب بثبت في الثاني
إن أدعى اللواذ ولا بثبت في الأول وإن ادعه...
فتاوي ملفهين الجليل الثاني صفحه 208

88 - والشبيحة في المحلول في ستة مواسم جارية ابنه والمطلقة.
طلاقاتاً بالكنائس والجارية المباعة في حق البائع قبل
النسلم والمهورة في حق الزوج قبل القبض والمشروع.
بينه وبين غيره والمرغوب في حق المتهر في رواية كتاب
الرهن ففي هذه المواضع لا يجب الحد وأن قال علمت
أنها علي حرام * الهـatement صفحه 36

89 - الشبيحة في المحلول في وطأة ولادة ولد ولدت ماذا
في الكافين سواء كان ولادة حياة أو ميتاً هكذا في العتابة
ثم إن حبلت ولدت يثبت النسب من الإب ولا يجب
العقر وإن لم تحبل فعلى الإب العقر، ولا يثبت الملك له فيها
والجد كالاب، لكن لا يثبت نسباً دقيقاً الإب وفي وطأة
المعونة بالكنائس ووطأة الإمة المباعة في حق البائع قبل
النسلم كذا في الكاف وكدار في وطأة جارية مكانه وعبد
بالشبهات ثم الشبحة نوعان شبهة في الفعل وتسمى شبهة
اشتباه وشبهة في الحلال ويتسمى شبهة حاكمة فالأولى
يتحقق في حق من اشتبه عليه لان معناه أن من يظن غير
الدليل دليلا ولابد من الطين لتحقق الشبهة والثانية
يتحقق لقيام الدليل النافي للحرمة في ذاته ولا يتوقف على ظن
الجاني واستقاده فالمديسق بالنوعين لإطلاق الحديث
والنسبة تثبت في الثانية إذا ادعى الولد لا يثبت في الأولى
واين ادعاه للان الفعل تحمض زنا في الأولى وإنما يسقط
الخص لا يراجع الده ووأشباه الإعرابية ولم تحمض
في الثانية المقدمة صفحه 376
الوطني الموجب للعده والزناكذا في الكافي فإن تحمض
حراما يجب الحد وان تمكن ففي الشبهة لا يجب الحد
كذا في فتاوى فاضخان وشبهة ما يشبه الثابت وليس
بنابت وهي انواع شبهة في الفعل وتسمى شبهة اشتباه
وهي ان يظن غير دليل الحل دليلا وهو يحقق في حق
من اشتبه عليه دون أن لم يشتبه عليه ولا يبد من الفض
ليتحقق الإشتباه فإن ادعى أنه ظن انها حللا لم يبعد
وأن لم يدع حدوشبة في الحلال وتسمى شبهة حاكمة
الرضاعة ووطئ الملكة بعضها وان كان حراماً ليس بزنا وكذا وطئ امرأة الجائز والنفسا والمزوجة بغير شهوداً ويتزوج جامه بغيراء ذن مولاها ويتزوج العبد نغير اذن سيدة وطئ جارية ابنه ومكانته والجارية من المغنم في دار العرب وبعدما خرجت قبل القسمة ويتزوج جوسية وخماسى وقد واحدة وجمع بين اختلفت أو تزوج امة على حرة ويتزوج جماره نوطتها وقال علماً انها حرام فانَّه لا يعدعانا بِه حنيفة رجحة الله وقال ابوبوسف ومحمد بعده في كل وطئ حرام على النابذ كوطى محاره والتزويج لا يوجب شبهة فيه وماليس بحراح على البتيد فعقد النكاح يوجب شبهة فيه كما لنكاح بغير شهود وفي عدة غيره والشبهة الذي وكشفت عنه الناس اشتباه ان يقول ظننت انها تحمل لي فانَّه لا يعدع ابه * الجوهرة النيرة

86

الوطئ الموجب للهده والزنا وانه في عرف الشرع واللسان وطئ الرجل المرأة في القبل في غير الملك وشبهة الملك لا يفعل محظور والعروة على الإطلاق عند النعري عن الملك وشبهته يؤيد ذلك قوله هو ادرأوا الجحد و
الباب الثالث في ثبوت النسب

83 ولدانا تثبت نسبتها من الأم دون الرائي.

84 فتاوى سراج الدين ص 311

85 فإذا زنا الرجل بمرأة فجاءت بولد زانية لم تثبت نسبته منها إلا الأم فالتقي من ولادة الجوهرة.

النيرة في كتاب الأقرار.

86 والفرق هوان الإصل أن كل من ادعى أمرًا لا يمكن إثباته بالبينة كان القول فيه قوله من غير بينة وسكل من يدعى أمرًا يمكنه إثباته بالبينة لا يقبل قوله إلّا بالبينة والمرأة يمكنها إثبات النسب بالبينة لانفصل الولد عنها مما يشاهد فلا يدلّها من بينة ورجل لا يمكنه إقامة البينة على الإعلا في غفاء فيه فلا يحتاج إليها. 

87 عندها جلال الدين ص 888

88 وفي الينابيع الزنا الموجب للهدوء الوطئ الحرام الخالي من حقيقت الملك وحقيقه النكاح والملك الليمن وصو شههة الملك وشهبة النكاح وشهبة الإشتباه واما الوطئ في الملك

89 وطئ جاريةها المجوسية وجاريةة التي هي ابنه من
الإسلام يجمعهم * شريفية* صفحة 19

وأما إذا كان بينهما ناسرة وتعنون على اعداها:

19 كانت الدار الواحدة والوراثة ثابتة * شريفية* صفحة 19

18 كان يكون مثلًا أحد الملكين في الهند وله دار ومنعة

والآخر في الترك وله دار ومنعة أخرى، وانتقلت العصيدة

فيما بينهم حتى يستحل كلا منهما قتل الآخرين أظفر

رجل من عسكرا واحد هما برجل من عسكرا الآخرين.

فهتان الداران مختلفتان وتنقطع بإختلافهم ووراثات لانها

تلت على العصيدة والولاية * شريفية* صفحة 19

19 وسرجوف عن المراث بالكلية لا يحجب عندنا غير إضلا

لا حجب حروان ولا حجب نقصان و هو قول عامة

الصحابية رضى الله عنهم * سراجية وشريفية* صفحه 18

18 وعند ابن مسعود رضى الله حجب حجيب النقصان كالكافر

والقائل والرقيق * سراجية* صفحة 11

11 روي أن امرأة مسلمة تركت زوجها مسلما و خوين من

امهه مسلمين وأبناء كافرو ف قضى فيها علي وزيد بن ثابت

رض بان للزوج النصف، لا خوينها الثلث وما بقي فهو

للعصيدة * شريفية* صفحة 11
با سلام الولدوان المراد العلم بحسب النححة أو بحسب القهر والغلبة في النصرة في العاقبة للمسلمين. شريفية صفحه 16
واختلاف الدارين اما حقيقة كالعربي والذمي او حكما كالمستا من والذمي أو العريبين من دارين مختلفين * سراج
فذا مات العربي في دار الحرب وله ابن ذمي في دار الإسلام أو مات الذمي في دار الإسلام ولله ابن ابن في دار الحرب لم يرث أحدهما من الآخر لأن الذمي من أهل دار الإسلام والعربي من أهل دار الحرب * شريفية
صفحة 17
اما المثال الأول فظاهران العربي إذا خل دار الإسلام بامان فهو والذمي في دار واحدة حقيقة لكنهما في دارين مختلفين حكمان المستا من أهل دار الحرب حكما * شريفية
صفحة 17
والداران لا تنتمى باختلاف المنعة والملك لانقطاع العصمة فيما بينهم * سراج
صفحة 18
وذلك لأن دار الإسلام دار حكام فلا تنتمى الدار فيما بين المسلمين باختلاف المنعة والملك لان حكم
صفحة 19
عندابي حنيفة راح وفال ابو يوسف و محمد رح بجوز
ماصنع في الوجهين* الهـ* صفحه ۶۳۹
۶۶ ً اذامات المرتد وقلت أوقع بهما الحرب وحكام
الفاشي بلعاه بدي رحаб فما كتبه في حال إسلامه
فهولورته المسلمين وما كتبه في حال ردته بوضع في
بيت المال عندابي حنيفة رحمه الله وعندهما برح الكسبان
جميلرورته المسلمين* سراجيـه صفحه ۷۰۰
۶٧ ً واذا المرتد فلا تقتل ولكن تحبس حتى تسلم
* الهـ* صفحه ۶۳۹
۶٨ ً وكسب المرتد جميلرورته المسلمين بالخلاف
بين إصابتها* سراجيـه صفحه ۶۱
۶٩ ً وخلافي المرأة لانهيست حرية ولهذا ال sqlSession
* الهـ* صفحه ۶۲
۷٠ ً فكان نحن الزوجين مسلمين المولود ولديه كذلك
ان محمد رحه بولو ولأصير صار ولد مسلم زوجة مسلم
* الهـ* صفحه ۶۲
۷١ ً أن نبت الإسلام على وجه ولم يثبت على وجه آخر
فان يثبت وتولكك المولود بين المسلم والكافر فانه بكر
هي الاشر بالصمم عقوبة كالنار في الحلق وايضا المرتد لا بل لاء لا أنت الماب الي لا يكره عليه ويعتبر في الميراث

المرتد شريف صفه ۲٠۲

الانه لا ظهير منها زوجها لا نها بنفس الردة قد

بانت منه شريف صفه ۲٠۲

وبرت زوجها المسلمين ان ارتدة وهي مريرة لقصدها

ابطال حقه وان كنا صحيفة لا يزدهرها انها لا تقلن ولما

يتعلق حقها بمالها بالردة مخالف المرتد الهداية صفه ۶۶۶

وترت امرات المسلمين اذا مات اوقتل على رده وهم

في المدة لانه يصيرها واوان كان صححا وقت الردة الهداية صفه ۶۶۶

ويحبس ثلاثة أيام فان اسلم والاقل هذا اذا استمحل

فامرأة لم يستمحل قتل من ساعته ولا فرق في ذلك

بين الحر والعبد كذلك في السراج الوجاج الفتاوی

المالكية في جلى الله الثاني صفه ۸٧

وماباعها واشتريها او اعتقها او وهبه او زده او نصرف فيه

من اموالها في حال رده فهم صوب فان اسلم صحت

عقده واين مات اوقتل اوحق بدار العرب بطلت وهذا
88. فلم أن الكفر بروايتون فيما بينهم وإن اختلف نعلهم لان الكفر مسألة واحدة. * شريفية صفحه 12.
89. وقال ابن أبي ليلة اليهود والنصاري بروايتون فيما بينهم ولا توافق بينهما وبين المسلمين واستدل بنحناءاتنفاها على التوحيد والآراء وربوع موسى عليه السلام وإنزال التوراة فهما على ملة واحدة بخلاف الجموسي حيث ينكرون التوحيد ويشتلون آلهمين بذر أن وارم ولا يعترون ببني ولا كتاب منزل لهم إهل ملة أخرى. * شريفية صفحه 16.
90. وذهب بعض الفقهاء إلى معد التوارث بين اليهود والنصارى إياها الاختلاف اعتقادهما في ميسى عليه السلام ولا نجب فهما إهل ملتين شتيي كالمسلمين مع النصارى * شريفية صفحه 17.
91. يختلف إهل الأهواء فإنه ممن معرفون بالانبياء والكتب وبختلفون في تأويل الكتاب والسنة وذلك لا يوجب اختلاف المسألة. * شريفية صفحه 18.
92. سواء المرتذ فلا يثير من أحد لأمان مسلم ولا من مرتذ مثلها * سراجية صفحه 203.
93. لأنه جائز بالرداده فلا يستحقي الصلاة الشرعية التي
أذا تم ذبح فرد بما يقتل به غالباً، فإن لم يكن معدداً كحمر عظيمة فهو يستثنى. 

وأما القتل الذي يتعلق به وجوب الكفارة، فهؤلاء ماشبهم الذي يتعمد ضرره بما يقتل به غالباً، ومجاهدة على التوين معالدة على العاقلة والآثم والكفارة. 

وأما إذا كان من مسيحي أو صيد فصبه أن يانانوبلق في الدوام عليه فقتله، ووطنهدا، وهو راكبها وسقط منها سطح عليه، وسقط حصر من يده، فمات موجبة الكفارة والدية على العاقلة ولا آثم فيـه. 

وأما إذا كان القتل بالقصير دون المباشرة كحافر البيع وأو ضع الحجري في غير ملكه، فإنه يدفع الدية على العاقلة ولا قصاص فيه ولا كفارة. 

وإنما تليت آذى أوت القات الاب، بناءً عما، يثبت به قصاص ولا كفارة أيضاً، مع أنه حروم، وافتاقلته، فهموجب في أصله للقصاص، إلا أنه سقط بقوله عليه السلام. لا يقتل الولد بولدته ولا السيدة ببغدادها. 

فللا يرث الكافر من المسلمين إلا جمعاً وإن لم يرث الكافر. شريفة صفحة 18.
110. وإذا كان العبدان شريكين فاختلفوا أخذ منصب
"أعتقت" فإن كان موضعًا فشركه بالخياران شاء اعتقه وان
"ف pervasive" قيمة نصيبه وي شاء اعتصم العبدان
"ف pervasive" على العبد والولاء للمعتق وان اعتقه
"ف pervasive" والولاء للمعتق فإناEXAMPLE المعتمد عليهما وإناEXAMPLE المعتمد عليهما
"ف pervasive" شاء اعتقه وان شاء استعساع العبد والولاء بينهما
"ف pervasive" في الموجه والهداية مع الياسار والسيادة مع العما لا يرجع المعتق
"ف pervasive" عليه باليد والولاء للمعتق* الهداية ص166
"ممعتقت" بعض عناداني حنيفة ح بمنزلة الملونز مابقى
"ف pervasive" عليه درهم في فاك رزته فلا برح ولا يحبب احدهم
"ف pervasive" ميراث وانهما وحريره ويلحبب* شريفة ص13
"ف pervasive" والتحوْل الذي يتعلق به وجوب الفصول
"ف pervasive" والصفارة* سراحية ص12
"ف pervasive" ماانتقال الذي يتعلق به وجوب الفصول نهالالفت
"ف pervasive" عما أخذ بهما الرضبة بصلاح إمايجري إمبراء
"ف pervasive" تفريق الإجزاء لمعدد من الحشبة والمحروم وجهة
"ف pervasive" الإثم والصاص ولاكفر فيها ونوابي يوسف ومحمد رح
الباب الثاني  
في موانع الارث

المنع من الارث من الرق وإلا كان انواقص والقتل الذي يتعلق بإجوب القصاص والكفراء وإجوب الدينين وإجوب الدارين  
سراجية صفحة 17 و16

وذلك لان الرقيق مطلقًا يملك المال بسائر رأسائب الملك فلا يملكه اياً بالارث ولا ان جميع ما في يده من المال فهو لولاة فلو ورثتة من اقرائه لوقع الملك لسبئة فيه وكون نور يناللاني بلاسبب وانه باطل اجماعاً * شريفية صفحة 13
يعبر جميع المال * سراحية * صفحة 9
ثم الره على ذرى الفروض النسبية * دون ذوى الفروض
سارية بقد رحوهم * سراحية وشريفية صفحة 10
ثم ذوى الراحام * سراحية * صفحة 10
ثم مولى الموالات * وصورة مولى الموالات شخص
معروف النسب قال لا خرانت مولايم تربيني إذا مات
وتعلق عنني إذا أ внимت وقال الآخرونبلت فعندنا يصم هذا
العقد ويصير القابل وإثاغا وإذا كان الآخرين يصوم
النسب وقال للا ول مثل ذلك وقبله فورث كل منها
صاحبه وعقل عنه ولاجهول إن يرجع عن ما مما عقل عنه مولاهم * سراحية وشريفية صفحة 10
ثم المقرله بالنسب على الغير بحيث لم بثبت نسبة
بقرار من ذلك الغير إذامات المقرلي اقراره * سراحية
واستمرت فيه قيداً لا أول أن يكون القرار نسبة من المقر
متضمناً القرار بنسبة على غيره كما إذا جهل النسب بانه أوخو فانه يتضمن اقرار على أبيه بأنه ابنه
سراج هي * صفحة 11
ولومات اهداولوصيين لا تنتقل ولايته إلى الآخر حتى
اذهبه ليس له أن يتصرف ما لم ينصب القاضي وصيا آخر
والوصي الذي مات وصني إلى الحفي أو إلى رجل
آخر من أبي حنيفة إذا وصى إلى الحفي لابد أن
ان يتصرف مالم ينصب القاضي وصيا آخر لأن
لم يرض بي إبراهيم ومن ضمي برأي أثنيان
الجوهرة
النيرة في كتاب الوصايا.

وأما الوصي ووصي إلى آخر وهو وصي في تركه
وتركة الميت الأول ولده ولأب الشافعي لا يكون وصيا
في تركه الميت الأول لأنه رضي برائه لأبراهيم
غيره ولناته لما
استعان به في ذلك مع علمه أنه تعتبره الميتة قبل تنميم
مقصودة صار رضي بايديه إلى غيره * الجزهرة النيرة
في كتاب الوصايا

فيبدأ بأصحاب الفراق وهم اللذين لهم سهام مقدرة
في كتاب الله تعالى أوسنة رضوه عليه السلام وألإجماع
سراجية مع شريف
صم مقسه

ثم بالعصابات من جهة النسب والصلة مطلقين
بأخذ السنة الوردية ما بقيه أصحاب الفراق وعندما
النوراد
27 - وان كان على الميت دين ان كان محفظا بالتركة بيع كل الورثة بالجمع وان لم يكن محفظا يبيع بقدر الدين.

28 - وفيما إذاء الميت بيع عند خلافةهما كذا في الكافي، الفتاوى العالمية في كتاب الوضايا.

وصي باع عقارا يقضي بثمه دين الميت وفي يديه من المال ما يغفو لقضاء الدين جابر هذا البيع كما في حزنة المفتيين.

الفتاوي العالمية في كتاب الوضايا.

ومن اوصي إلى اثنتين لم يكن لا حدهما ان يصرف عنداني حنية وحمود رحم دون صاحبهما اشياء معدودة الا في شراء الكفن وتجهيز وطعام الصغير وكسرهم وردا الوديعة بينهما ورد المغصوب والمشروى شراء فاسدا وحفظ الاموال وقضاء الدينونados وتنفيذ وصية بينهما وعثت عبد بعينه الخصومة في حق الميت وقبول الله وقبول بيع مايخشي عليه التوي والتف وجمع الاموال الضائعة.

اللهامحيدة صفحه 330

30 - لو اوصي إلى مكان واحد على الإفراد قبل ينفرد كل واحد منهم بالصرف بمثله الوصيل إذا وصل واحد على الإفراد، الهداية، صفحه 340.
لا يجوز استحسس بوحنيفة رحمه الله تعالى فسأل الوليدة هنابيمن الوصاية وهي لا تجزئي فصمي نيبته للولادة في بيع البعض نيبته في الباقي ولا ين في بيع البعض أن ضار التعبير الباقى فكان في بيع الكل توضير المنفعة عليهم وللوصي ولاية ذلك في نصيب الكبير إلا برى أنه يملك الفحص وبيع المنقولات حال غيبته لما فيه من المنفعة والوليدة الجلد الثاني صفحه 113
وهذا الجواب في تركه هؤلاء يعني الأخ والأم والعم. وإنماقيد بركة هؤلاء لان وصي هؤلاء فيما ترك الاب ليس كوصي الاب في الكبير الغائب فان وصي الام لا يملك على الصغير بيع مارته الصغير عن ابي العقار والمحقول في ذلك سواء لانه قائم مقام الام ولا محال حيانها لانه لا يملك بيع مارته الصغير المحقول والعقار المضغول بالدين والخالى عنه فكذلك لوصيها واماما ورثه الصغير من الام فلو ض inex alif يبيع المحقول دون العقاران له ولاية الحفظ وبيع المحقول من الحفظ دون العقار عنابة الجلد الثاني ص 110 .

وقد بالغيبة لانهم اذا كانوا حضورا ليس للوصي التصرف في الشركة اصلا لكن يقتضى ديون الميت ويقبض حقوقه ويدفع الى الورثه الا اذا كان على الميت ديون او وصي بوصية ولم يقض الورثة الديون ولم يخذوا الوصية من مالهم فانه يبيع التركه كلها كان الدين محبطا وبحقدار الدين ان لم يعط وبيع مازاد على الدين اياا اياا حنيفة رح خلفاهما رحمهم الله تعالى وينفذ الوصية بمقدار الثالث ولو باع لنفديها شيئا من التركه جاز بمقدارها بالاجماع وفي الزيادة الخلافة
فلبس له بيع العقار عليهم ولله ولادة بيع المناقل فذكرا القسمة
لأنها نوع بيع عنيدة الجملد الثاني صفحة 490
وبيع الوصي على الكبير الغائب جائز في كل شيء
الإي العقار لاب يلي مسواة ولا يليه فذكرا وصية
فيه وكان القياس أن لا يملك الوصي في رق العقار أيضا
لأنه لايملك الإب على الكبير لتأن استحسنا لذكرا حافظ
لتشريع الفساد عليه وحفظ الثمن اسبر وهو يملك الحفظ
اما العقار فخصر بنفسه الهديه صفحة 438
لوقاون للكبير الغائب مال تلقى لأس تركة الإب
لم يملك الوصي بيع ذلك فتأري سراجية صفحه 811
وصية الإب والعم والام فيما وريت الصغير والكبر
الغائب من هولاء منزيلة وصية الإب في الكبير
الغائب فتنصاورى سراجية صفحه 811
 وقال أبو يوسف محمد رح وصية الإب الصغير
والكبرى الغائب بمنزيلة وصية الإب في الكبير الغائب
وكذا وصية الإب وصية الأم وهذا الجوابا في ترك
هولاء لن رصيمهم قائم مقامهم وهم يملكون ما ييقون
من باب الحفظ فذكرا وصيهم الهديه صفحة 438
يبيع حصة الصغر من العقار بالإجماع وفي بيع حصة
الكبراء الخلاف وان كانت مشغولة بدين مستغرق يبيع
الكل وبغير مستغرق بقد رالدين والزيادة على
الخلاف * عناية الجـمـل لثاني صفحة 118

رجل أوصى إلى رجل وأوصى لرجل آخر بذلك
ما له ورثة صغار وكبار غياب فقاسم الوصي الموسمي له
نائبا عن الورثة واعطاه الثلث وأمسك الثلثين للوزنة
فالقسمة نافذة على الورثة في المنقول والعقاران كانوا
صغار وفي المنقول ان كانوا كبار احتى لو هلك حصة
الورثة في بدء لم يرجع الورثة على الموسمي له بشيء
واما إذا كان الوارث كبيرا حاضرا وصاحب الوصية
فإن القسمة الموسمي مع الوارث عن الموسمي له فاعطي
الورثة حقهم وأمسك الثلث للموسمي هلم ينفذي القسمة على
الموسمي له صغيرا كان وكبيرا حاضرا وغائب في المنقول
والعقار جميعا حتى لو هلك في بدال الوصي مافرضه كان له
ان يرجع على الورثة بعد ما في ايد يهم والفرق بين
المنقول والعقاران الورثة اذاك نواصرا كان للوصي يبيع
نصيب الصغراء المنقول والعقار جميعا اذاك كانوا كبارا
فمات وهي في العدة ورثته وان مات بعد انقضاء العدة فلا ميراث لها * الهــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــــ&n
ذلك وبقي ثلث و هو خرج من ثلث مابقي من ماله فله جميع ما بقي * الهُدْيَاتا صفحه ١٠٩
ولواصي بثلث ثيابه فهلك ثلثاه و بقي ثلث و هو خرج من ثلث مابقي من ماله لم يستحق الاثلت ما بقي من الثياب قالوا هذا إذا كأن الثياب من اجنس مختلفة ولو كانت من جنس واحد فهبو بنزالة الدراهم وكذلك المعكيل والموزون بنسانته لا أنه يجعل فيه الجمع جبرة بالقسمة * الهدیة صفحه ١٠٠
و لهذا من النبرع والمحاباة لا بقدر الاثلت بخلاف النكاح لأنه من الحوافز الأصلية وهو بمهرب المثل * الهُدْيَاتا صفحه ١٠٣
١٣ وإقرار المريض لوارثه باطل إلا أن يصددهم بقية الورثه وكذا هبته له ووصيته للايجوز إلا أن يجزيه بقية الورث وهذا إذا تصل المرض بالم وت فاطل بالم وت لقوله عم لا وصية لوارث ولا إقرار له بإدبن * الجوهراء النيرة في كتاب الاقرار
١٤ وإقرار المريض لوارثه لا يصح إلا أن يصددها في بقية ورثه * الهُدْيَاتا صفحه ١٠٤
١٥ إذا ذاق البرجل إمرانه في مرض موتة طلا فا تابنا
(30)

كما يجب بدلاً من مال ملكه اعترافًا بحيلته كان ذلك بالحقيقة من دين الصحة إذ قد علم وجوهرة بغير إقراره فلذك صيحة في الحكم * شريفة صفحه 7.

فان كان الكل دين الصحة اعني ما كان ثابت بالبينة أو بالإقرار في زمن الصحة أو كان الكل دين المرض اعني ما كان ثابتًا بالإقرار في مرضاه فانه يصرف الباقي التي قسم على حسب مفاد دينهم أن اجتمع الدينان معاهد دين الصحة لكونه قوي * شريفة صفحه 6.

ومن مات عليه سلم أو دين سواء إلى أجل حل ما عليه والإصل أن موت من عليه الدين يبطل الإجل لان الإجل من حقه وقد بطل حقه لموت وموت من له الدين لا يبطل الإجل لان الإجل من حق المطلوب وهو في وليس لورثه أن يطلب قبل الإجل * الجوهرة النيرة في باب المراقبة والنولى

ومقتضى عبارة الكتاب تقديم الوصية على الإرث في مقداره الباقى بعد الدين سواء مكانت الوصية مطلقة وميظعة وهو ليصح ويتمحورة صفحه 7.

بمن اوصى بثلاث دراهم أو ثلاثة فننة فهلك ثلثا
والثالث يلبسه في دعارة يكفن بالثاني لأن الأول أعلى والثالث الدنيا فالمتوسط أولى شريفة صفته 3°، وإنما كان قضاء الدين مؤخرًا عن الكفن لأنه لباسه بعد وفاته يعتبر بليبسه في خيواته الأثر ينيره إذا يباع على عليه ما على المد ير من ثابه مع قدرته على الكسب شريفة صفته 5°. وأعلم إن الابتداء بالكنس ليس مطلقا كما تشير بسمة الكتاب بل كل حق للغير يتعلق بعين التركة فإن المقدم على تكفينه كالدين المتطلق بالمرهون إذ لا يمكن للميت شيء سواء في قضى من دينه ولا شريفة صفته 3° وأنا أفرح الرجل في مرض موتاه ديون عليه دينه وصمه في حصن عقب الزمان في مرضه بسأب معلومة فدين الصحة والدين المعروف بالإسباب مقدم لا أنه لا تهمه في ثبوت المعروف بالإسباب إذا المعين لميرده مثل بدل ما بملكه واستهلك وعلم وجهية بغير أمره أو تزو ج امرأة بغير مثلها. وهذا الدين مثل دين الصحة لا ينعدم أحدهما على الآخر الجموحة النيرة في كتاب الإقرار 6° وأما إذا أقرر مرضه بدین علم نعمة بطريق المعانة
الفراءض
على
مناهب أبي حنيفة

الباب الأول
في التركية وما يتعلق به من الحقوق
قال علماء نارحهم الله تعالى بتركية البيت حقوقهم مرتب الأول يبدوا بتخفيفه وتجهيزه بلا تبذير ولا تقتير ثم تفضي ديوهم من جميع ما بقي من المال ثم تنفذ صيامهم تلك مابقي بعد الدين ثم يقسم الباقى بين ورثته 

لاستعمالbach رعد ذلك الرجل بآكتر من ثلاثة أثواب
والمرأة بأكثر من خمسة تبذير وواقل مما ذكر تقدير
واما استعمال القيمة فإدا كان يلبس في حيونته ماقيمته عشرة
مثلان فلكين بما قيمتهما أقل أو أكثر منها كان تقديره أو تبذير
وإذا كان له ثوب يلبسه في الأعياد والثاني يلبسه بين إفراطه
## INDEX.

### A. Acknowledgment.
- Deeds on Death-bed, .................................................. 2
- Of Kindred, when sufficient to constitute an heir, ................. 17
- Conditions of its validity, ........................................... 40  
  
### B. Assets.
- When they are commensurable, .......... 106
- Distribution of, among Classes of Heirs, .......................... Ibid.
- When the Classes and Assets are commensurable, .................. 107
- When they are incommensurable, .................................. 109
- Distribution of, among Creditors, ................................. 110
- When the Debts and Assets are commensurable, .................... Ibid.
- When they are incommensurable, .................................. 110

### B. Bhiptool-Mal.
- What, ................................................................. 19
- Entitled according to Malik and Shafei, to surplus, on failure of Residue, ................................. 111
- Preferred to the Distant Kindred, by Zaid the son of Thabit, Malik, and Shafei, .................. 127

### A. Apostasy.
- Punishment of, in Males, .......................................... 26
- In Females, .......................................................... 27
- With Devotion to a foreign Country, and Judicial Declaration of the Fact, amount to Civil Death, note, 28

### A. Apostates.
- Incapable of inheriting to any one, ........ 25
- Succession to their Property, ............... 26
- Power of a Male Apostate, over his Property, ................. Ibid.
- Distinction between Acquisitions before and after Apostasy, .... 27
- Disposal by a Female Apostate of her Property, ................ Ibid.

### A. Arrangement.

#### First Principle, .................................................. 95

#### Second Principle, ................................................. Ibid.

#### Third Principle, .................................................. 96

#### Two Descriptions of Principles, and difference between them, .... 97

#### Fourth Principle, ................................................ 98

#### Fifth Principle, .................................................. 100

#### Sixth Principle, .................................................. 101

#### Seventh Principle, .............................................. 103

### A. Assets.
- Distribution of, among individual Heirs, ......................... 105
- When the Heirs and Assets are incommensurable, .................. Ibid.

### A. Captives.
- Rules respecting, ............... 171

### B. Co-habitation.
- Proof of, alleged to be sufficient evidence of Marriage, .......... 47
- Doctrines questioned, ............................................... 48
- It's general Value as a Fact, from which the Contract of Marriage may be inferred, ................. 49

### A. Common Accident.
- Relatives perishing by, ........................................... 172

### A. Composition.
- By an Heir, it's effect on the Arrangement of the Estate, ....... 108

### A. Contract.
- Successor by, ...................................................... 15
Form of the Contract, .................. 17
COUNTRY.
Difference of, an Impediment to Inheritance, .......... 28
Actual Difference of Country, .......................... 29
Constructive Difference of Country, Ibid. .............. 30
In what the Difference of Country consists, ............ 30
CREDITORS.
No Preference among Creditors, ...................... 2
Distribution of Assets among them, .................... 109

D.
DAUGHTERS.
Share of one Daughter, .................... 59
Share of two or more Daughters, .................... 60
They become Residuaries with a Son, Ibid. ........... 61
DEATH-BED,
Debts acknowledged on, postponed to all others, ......... 2
Divorce, it’s effect on Widow’s right of Inheritance, ....... 4
Gifts on Death-bed, how far lawful, .................. 3
DEBTS,
Postponed to Funeral Expences, .......... 1
Preferred to Legacies, ..................... 2
Not immediately payable, become so by Debtor’s Death, Ibid. 
Otherwise, on the Death of the Creditor, Ibid. ....... 4
Acknowledgments of Debt on Death-bed to a Heir, void without the consent of his Co-heirs, ..... 4

DESCENT.
Three Degrees in it’s establishment, ............ 37
Establishment of, sufficient to constitute an Heir without proof of legitimacy, .......... 56
DISQUALIFICATION.
It’s effect on Person disqualified, ............ 31
On others, Ibid. .................................. 32
Peculiar Opinion of Ibn Musood, .......... 32

DISTANT KINDRED.
Inherit after Sharers and Residuaries, .................. 13
Definition of, ......................... 127
Divided into four Classes, Ibid. ..................... 128
Order of their Succession, ...................... 129
First Class, .................................. 140
Second Class, .................................. 141
Third Class, ................................... 141
Fourth Class, .................................. 148
Children of the Fourth Class, ..................... 149

EXCLUSION.
Total and Partial, ......................... 57
Sharers liable to partial Exclusion, Ibid. ............ 57
Sharers liable to Total, Ibid. ....................... 57
Their Exclusion regulated by two Principles, .......... 58

EXECUTORS.
May be appointed for Management of the whole Estate, ....... 5
Power of a Father’s Executor over the Property of Minors. Ibid. 
His power over the Property of Adults, 8
Power of a Mother’s Executor, Ibid. .................. 9
Power of General Executors, Ibid. .................... 10
Power of a single Executor, when several are appointed together, ............... 11
When they are appointed separately, 11
Power of the Survivor, Ibid. ........................ 12
Executor of an Executor, Ibid. ...................... 12

EXTRACTORS OF SHARES.
Extractor of one Share, ..................... 87
Of two or more Shares of the same Series, Ibid. 
Of two or more of different Series, 98
Extractor of a Half, with any of second Series, Ibid. 
Of a Fourth, with any of second Series, Ibid. ....... 99
Of an Eighth, with any of second Series, Ibid. 
Extractors not liable to increase, 90
Increase of Extractor Six, 91
Increase of Extractor Twelve, 92
Increase of Extractor Twenty-four, 93
Peculiar Opinion of Ibn Musood, Ibid. ............ 93

EVIDENCE.
Of Marriage, 48
Value of Cohabitation, as Evidence of Marriage, 49
In Cases of Inheritance, 112
Of Life in an Infant, 160

F.
FATHER.
His Share, ......................... 62
Is the Residuary, when there is no Son nor Child of a Son, 63, 73
Sharers with him, as Residuary, 74
Executor of a Father.—See Executors.

FORNICATION.
What, ................................. 34
It’s Punishment, ............................ 35
When wived, Ibid. ................................ 36

FUNERAL.
What is comprehended in the Funeral of a Moohummudan, 1
Must be conducted suitably to the rank of Deceased, Ibid. 
Expenses payable before Debts, Ibid. .............. 2
Exception as to particular Property, 2
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRAND-FATHER</td>
<td>63</td>
</tr>
<tr>
<td>True Grand-father, who</td>
<td>63</td>
</tr>
<tr>
<td>His Share,</td>
<td>Ibid.</td>
</tr>
<tr>
<td>Is the Residuary after the Father,</td>
<td>73</td>
</tr>
<tr>
<td>Sharers with him, as Residuary,</td>
<td>75</td>
</tr>
<tr>
<td>False Grand-father, who</td>
<td>65</td>
</tr>
<tr>
<td>False Grand-fathers are distant kinsmen of the second Class</td>
<td>127</td>
</tr>
<tr>
<td>GRAND-MOTHER</td>
<td>65</td>
</tr>
<tr>
<td>Who are true Grand-mothers</td>
<td>65</td>
</tr>
<tr>
<td>Their Share,</td>
<td>Ibid.</td>
</tr>
<tr>
<td>False Grand-mothers, distant kinswomen of the second Class</td>
<td>128</td>
</tr>
<tr>
<td>GIFTS</td>
<td>4</td>
</tr>
<tr>
<td>To an Heir on Death-bed, not valid without assent of Co-heirs</td>
<td>4</td>
</tr>
<tr>
<td>Assent must be given after the Donor’s death</td>
<td>Ibid.</td>
</tr>
<tr>
<td>GESTATION</td>
<td>156</td>
</tr>
<tr>
<td>Shortest Period of</td>
<td>156</td>
</tr>
<tr>
<td>Longest Period of</td>
<td>157</td>
</tr>
<tr>
<td>K.</td>
<td></td>
</tr>
<tr>
<td>KINDRED</td>
<td>1</td>
</tr>
<tr>
<td>See Acknowledgment and Distant Kindred</td>
<td>1</td>
</tr>
<tr>
<td>L.</td>
<td></td>
</tr>
<tr>
<td>LEGACIES</td>
<td>2</td>
</tr>
<tr>
<td>Valid only to the extent of one-third of the Property after payment of Debts and Funeral Expenses</td>
<td>2</td>
</tr>
<tr>
<td>Legacy to an Heir, not valid without Assent of Co-heirs</td>
<td>4</td>
</tr>
<tr>
<td>Assent must be given after Testator’s Death</td>
<td>Ibid.</td>
</tr>
<tr>
<td>LEGATES</td>
<td>2</td>
</tr>
<tr>
<td>Preferred to Heirs to the extent of a third of the Property</td>
<td>2</td>
</tr>
<tr>
<td>Exception as to particular Property</td>
<td>3</td>
</tr>
<tr>
<td>Universal Legates</td>
<td>19</td>
</tr>
<tr>
<td>LEGITIMACY</td>
<td>20</td>
</tr>
<tr>
<td>See Descent</td>
<td>20</td>
</tr>
<tr>
<td>M.</td>
<td></td>
</tr>
<tr>
<td>MOOBOOLUR AND MOOKATUR</td>
<td>21</td>
</tr>
<tr>
<td>Incapable of inheriting</td>
<td>21</td>
</tr>
<tr>
<td>MARRIAGE</td>
<td>37</td>
</tr>
<tr>
<td>First Step or degree in the Establishment of Descent</td>
<td>37</td>
</tr>
<tr>
<td>Difference between Marriage and other Degrees</td>
<td>38</td>
</tr>
<tr>
<td>Child begotten in Marriage, Can be repudiated only by Lian</td>
<td>Ibid.</td>
</tr>
<tr>
<td>Case of Constructive Marriage</td>
<td>46</td>
</tr>
<tr>
<td>Proof of Marriage</td>
<td>48</td>
</tr>
<tr>
<td>Value of Cohabitation, as an Instance of Marriage</td>
<td>49</td>
</tr>
<tr>
<td>The Acknowledgment of a married Woman, not sufficient to establish the Descent of her Child</td>
<td>42</td>
</tr>
<tr>
<td>MISSING PERSON</td>
<td>165</td>
</tr>
<tr>
<td>Definition of</td>
<td>165</td>
</tr>
<tr>
<td>Rule respecting</td>
<td>168</td>
</tr>
<tr>
<td>Arrangement of Estate, where one of the Heirs is Missing</td>
<td>169</td>
</tr>
<tr>
<td>MOTHER</td>
<td>34</td>
</tr>
<tr>
<td>Relation between Mother and Child how established</td>
<td>34</td>
</tr>
<tr>
<td>Her Share</td>
<td>63</td>
</tr>
<tr>
<td>O.</td>
<td></td>
</tr>
<tr>
<td>OOM-I-WULUD</td>
<td>38</td>
</tr>
<tr>
<td>Cannot be sold, and is entitled to freedom after her Master’s Death</td>
<td>38</td>
</tr>
<tr>
<td>Paternity of her Child established, without Express Claim</td>
<td>39</td>
</tr>
<tr>
<td>Her Child may be repudiated by simple Denial</td>
<td>Ibid.</td>
</tr>
<tr>
<td>P.</td>
<td></td>
</tr>
<tr>
<td>PARENTAGE</td>
<td>40</td>
</tr>
<tr>
<td>Established by Acknowledgment</td>
<td>40</td>
</tr>
</tbody>
</table>