NOTES ON BUDDHIST LAW

BY THE JUDICIAL COMMISSIONER, BRITISH BURMA.

VI.—INHERITANCE AND PARTITION.

PREFACE.

Translation by Moung Theka Phyoo of the Law of Inheritance according to the Mohavicchedani Dhammathat from a Burmese manuscript. Edited by Dr. E. Forchhammer, Professor of Pali.

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VI.—INHERITANCE AND PARTITION.

By John Jardine, Esq., Bo. C. S., Judicial Commissioner of British Burma.

PREFACE.

The notes by Dr. Forchhammer, who drew my attention to the *Mohavicchedanī* Dhammathat and has been good enough to edit it, state sufficient reasons for my printing for the Courts of British Burma this the most recent of the known Dhammathats. It is written in Pali gāthās with a Burmese translation; and the reader can compare the rules of inheritance here laid down with those found in Dr. Richardson's *Menu Kyay* and in the *Wonnana* as translated in V Notes on Buddhist law. The translation was made under my supervision by my interpreter, Moung Theka Phyoo, and the division into paragraphs by Dr. Forchhammer in consideration of the Pali gāthās. I believe that many officers in the Burma Commission will be surprised to find a Dhammathat compiled so recently as 1832 A. D.

Rangoon:
The 20th March 1883.

JOHN JARDINE,
Judicial Commissioner.

Translation by Moung Theka Phyoo of the Law of Inheritance according to the Mohavicchedani Dhammathat from a Burmese manuscript. Edited by Dr. E. Forchhammer, Professor of Pali.

Note.—The *Mohavicchedanī* or "Dispeller of ignorance" was written in the year 1193 (A. D. 1832), during the reign of Pagyeedau, by Rājabala Kyawdin; it is probably the most recent of Burmese Dhammathats and of sufficient importance to claim the notice of the student of Burmese law as it stood immediately after the British occupation of Arakan and Tenasserim. It differs in one important point from all other Burmese law-books: Manu, the Rishi, has entirely disappeared. Rājabala Kyawdin, aware probably of the incongruity of placing Manu in the Buddhist pantheon, as had been done by the jurists of the Alompraic period, and not finding any reference to Manu in the Buddhist scriptures that could support Manu in the dignity of a lawgiver to a Buddhist community, broke with the past traditional history of the law-books of his country; he says in the introduction that, obedient to the request of his king, he proceeds to unfold the law as it was preached by the allwise Buddha in his great compassion for the ignorance of men and recorded originally in the Magadha language, the first of all languages, the mother of all other tongues (mūlabhāsā).

He converts the "Manu" into Buddha's "dispeller of ignorance" by the simple way of omitting all mention of Manu and Mahāsamata and by allowing Buddha to decide and legislate in their stead.

The text of the *Mohavicchedanī* is the somewhat re-arranged but otherwise identical law-material of the Manu Dhammathats. On the historical and literary impropriety of converting the dicta of Manu into those of Buddha it is not necessary to expatiate.

E. FORCHHAMMER.

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1. If the father die first, and if the son take the place of the father, (he, the son) shall have the elephants, horses, and wearing apparel and ornaments used by the father, and also the ancestral paddy land and da and sword, and so forth.

2. As regards the estate other than the said property, the son shall have one share only and the mother three shares. In case of male slaves also division shall be made in the same proportion, that is to say, one share shall go to the son and three shares to the mother.

Furthermore, the female slaves and such wearing apparel and ornaments, &c., as were given by the father to the mother shall be exclusively kept by the mother. The son shall have no right to this. Even if there be ten sons, the division shall be in accordance with the rules here given.

3. As regards division of property to be made between the daughter and mother, the daughter shall have such wearing apparel and ornaments and so forth as were previously given to the son and daughter by both parents during the lifetime of the father, and such quantity of paddy, corn, and gram as would be considered reasonable, and one male slave of her (daughter's) choice and a pair of bullocks (or buffaloes).

As regards the estate other than the said property, the mother only shall get it. Thus it should be known,

4. As regards division to be made between the father and son in case of death of the mother, the son shall have such wearing apparel

and ornaments as were given by both parents, two pairs of bullocks and two pairs of buffaloes, three young kala goats, stout and able to fight, twenty she-goats, and one milch-cow; all these properties shall go to the share of the son. The father only shall get the rest of the estate. Though there may be ten sons, yet division shall be made in the same manner.

5. The division to be made between the father and the daughter is thus: Such wearing apparel and ornaments as were given by both parents, such wearing apparel and ornaments as were used by the mother, two pairs of bullocks and two pairs of buffaloes, ten cows, twenty she-goats, one female slave,—all these properties the daughter shall receive. The father alone shall have the residue. In this manner the division should be made.

6. The division to be made between the sons and daughters after the death of the mother and father is thus:—The eldest son (thagyee, သားကြီး) and eldest daughter (thamigyee) shall receive two shares, the younger son (thalát, သားလတ်) and younger daughter one and-a-half share, and the youngest son (thagnai, သားငယ်) and youngest daughter one share only. The eldest son and eldest daughter shall receive bullocks and buffaloes in addition.

This is applicable to the sons and daughters only who live and eat together with the mother and father and who have not yet been married, and not to the sons and daughters who have already been married and who live separately (from the parents).

7. Although the daughter may be the eldest, still she does not reach the awratha (အရာ); she will get just as much as her brother younger than herself; but if there are daughters only, they will get shares according as their age is older and younger.

8. An instance other than the above is as follows:—After the eldest brother (ikkogyee) has just chosen (a thing) then the residue shall be made into twenty shares and the eldest brother shall again take a share. The remaining nineteen shares shall be in like manner made into twenty shares and the brother who is younger and next in age to the eldest brother shall choose and take a share. In this way it shall continue to be divided until it comes to the brother who is the youngest of the lot, and this being done the remaining property shall be equally chosen and taken up.

9. If a son or daughter do not listen to the words of his or her mother and father, or if he or she behave himself or herself in such a manner as to cause a fine or penalty to be paid, or if he (the son) be a hermaphrodite (ဖဿဝဏ္ဏ), or if the eldest son or eldest daughter do not perform the business of their mother and father, the share of such son or daughter in the inheritance shall be forfeited or made less.

10. If a son or daughter, although the youngest, perform the business of the mother and father in greater degree, such son or daughter shall receive greater share in the estate. Be it known so.

11. If (the mother and father) through living together with their elder son or elder daughter are not prosperous, but if they (the mother and father) are prosperous through living together with their younger

son or daughter, the younger son or daughter only shall get the estate of the mother and father.

12. If the elder sons, after getting such shares in the inheritance as they deserve, live separately, but if the younger son live together with the mother and father, this younger son shall get the house (and its belongings).

13. The mother and father should not demand (back) what has been given as khamai (ခမည်း)—(present given to a sickman to avert evil or facilitate recovery). In the same way what has been given as khamai by the relatives shall not be demanded (back), but something may be given in return.

14. If the eldest brother take a greater share in the inheritance than (the total amount of the inheritance claimed by) the younger brothers, he shall not even get his own share, and also deserves criminal punishment.

15. If the wearing apparel and ornaments used by the father and mother be in the hands of the thagnai (သားငယ်), younger son or daughter by passing or after it has passed from hand to hand among the sons or daughters, that younger son or younger daughter only who has the thing in his or her hands shall get it. Other daughters shall not get it.

16. Property given at the time of marriage, property given by mother and father or relatives, and property obtained by one's own skill, these are separate property and should not be divided.

17. A person should keep what has already come to his or her hands although it was not, or might not have been, given him or her; but if the property has not come into one's hands, he or she should not get it although it was given him or her. Be it known so.

18. If a person who should feed fails to do so, and if in consequence of his failure a stranger looks after and feeds *the person*, and if the person so looked after and fed die in the hands of this stranger, he (the stranger) who looked after and fed the person shall get his (the deceased); property.

19. Previous to the division of the inheritance of the mother and father, property for religious purposes, for liquidation of debts, for performance of marriage of such sons or daughters who were not yet married, should be kept (aside).

20. If a person who should inherit is absent in a foreign and distant place, his share should also be kept. It must not be said that he is not present.

21. If the eldest brother die before he gets a share in the inheritance of his mother and father, this eldest brother's son shall get a share equal to that of the youngest brother. If the eldest brother has no son (child), his wife shall get such a share as may be considered reasonable.

22. If a woman or a man die, the one living only is entitled to get the property which has already been given and delivered. The father and mother of the deceased person are not entitled to the property.

23. If either a man or a woman who became husband and wife of their own accord and without the marriage being effected by the

mother and father die, the mother and father are entitled to get their property which was taken away by them, but they (the mother and father) are not entitled to get what has been acquired by the labour of the persons who became husband and wife of their own accord or their လင်ထက်မှာဖွေ (property acquired after their marriage).

24. If, between the man and woman who live separately, the man do not live but die, and if the woman live together with the father and mother and die, the father and mother of the woman only should get all property.

The father and mother of the man are not entitled. In the case of death of the woman also the same rule as abovementioned will govern.

25. If, in order to avoid anxiety, the property be given to a son and if the son die, the daughter-in-law only shall not get the property. The property should be equally divided between her and her ယောကျ့ (youkkhama) father or mother-in-law. The case of property given to the daughter should be decided in the above manner.

26. If the husband die without issue, the wife is entitled to the inheritance.

But as regards paddy land and landed property which have descended from the man's ancestors, the younger brother and the sons of the deceased shall enjoy the landed ancestral property.

If the wife die also, the same rule applies.

27. If after eloping with a man, and if after a son or sons are born the man dies, such sons only as were born to a woman and one's male slave, *couple* who were given in marriage with the consent of the father and mother, are called awratha (သြရသ).

28. If a woman be one who is free (not a slave), and if the man be another's slave, and if the man die, the woman only shall get the wearing apparel and ornaments used by the woman.

The remaining property shall be equally divided between the woman and the man's master. But if the man be one who is free and the woman be another's slave, the same rule applies.

29. There are three kinds of sons, *viz.*, awratha (သြရသ), son of the great wife, hettima (ဟေဒိမ), son of a pyoung (အဝေဘင်), concubine, khettaja (ခေတ္တဇ), son of a female slave. Of these three sons, the awratha, the son of the great wife, should get four shares, the hettima, or son of the concubine, one share, and the khettaja, or son of the female slave, one share and a half.

30. If the man die and if the woman marry a slave, and if the woman die, the son who is born to the woman and the slave should get (a share) equal to that of the son or sons by a former marriage. Be it known thus.

31. If the wife die and (the husband) take possession of a female slave, and if a son or sons are born to them, the son or sons shall get only such property as may be given him or them from feelings of pity. If no property be given from such feelings of pity, he or they shall not get. Be it known thus.

32. If a woman is bought and made a wife and if the man die, the woman should get her liberty. In the same manner, a man who

was bought and made a husband should get his liberty on the death of the wife.

33. If a man who has two wives die, his superior wife should get three shares and his inferior wife two shares. But if the superior wife has no children or grandchildren, and if the inferior wife has children and grandchildren, division shall be made in equal shares.

As regards the sons and daughters also, division shall be made in the same manner in accordance with superiority and inferiority.

34. When a man who has five wives dies, the wife who was of the Khattiya class (*i.e.*, a Kshatriya) and the wife who was the daughter of a general (sit-thoogyee) shall get five shares. The wife of the poona (ပုဏ္ဏား), Brahmin, class shall get four shares, the wife of thahtai (သူဌေး), rich, class three shares, and the wife of thoosinyai (သူဆင်းရဲ), poor, class two shares. Thus a wise man shall make division, having regard to the class (myo).

35. When the mother dies and when the father, after marrying another woman and living with her, dies, such letthetpwa (လက်ထပ်ပွား) property as might have been acquired subsequently (since the second marriage) shall be made into eight shares, and the meedwai (မိတွေး), stepmother, shall get five shares, the ouktha (အောက်သား), son by the second marriage, two shares, and the ahtettha (အထက်သား), son by the former marriage, one share only.

But as regards the ahtetooksa (အထက်ဥစ္စာ), property acquired before the second marriage, provided it is in existence, the ahtettha son by the former or first marriage shall get three shares and the step-mother one share. But if the property shall have been entirely spent (or consumed), the ahtettha son by the former or first marriage shall have no right to say (or claim) in any way. But if both the father and step-mother die, the son by the former marriage only shall get the ahtetooksa (အထက်ဥစ္စာ), property acquired before the second marriage or during the continuance of the former or first marriage. The oukooksa (အောက်ဥစ္စာ), property acquired since the second marriage, shall be made into four shares, and one share shall be kept aside for charitable purposes, and the ouktha (အောက်သား), son by the second marriage, shall get two shares, and the ahtettha (အထက်သား), son by the former marriage, one share.

The property of the mayagyee (မယားကြီး), great wife, and that of the mayahgnai (မယားငယ်), lesser wife, shall not be mixed up. Following the above rule, if the father die and if the mother after marrying another man die also, division shall be made.

36. In the case of uterine brothers or sisters, even if a child be a serpent it shall get a share in the inheritance.

But in the absence of such uterine brother or sister, bahdwai (ဘထွေး), father's younger brother, bahgyee (ဘကြီး), father's elder brother, ooyee (ဦးရီး), uncle, and so forth, shall enjoy (or get) the inheritance. In the absence of such kindred the inheritance shall become the property of the Government.

Remarks.—The *Mohavicchedanī* finished with the following gāthā:—

Rājabalakyawdin iti, laddhabandhena dhinnatā
Mohavicchedanī nāma, dhammasattham samākatam.

"Rājabalakyawdin, who obtained this honorary title by virtue of his learning, completed the Dhammathat called Mohavicchedanī" in the year (၁၁၁၅ခု) Viluppakam (*i.e.*, B. E. 1193, A. D. 1832) in the month of February. The manuscript counts 41 leaves, 10 lines to the page.

Rājabalakyawdin arranged both the Pāli text and the Burmese version; but the latter is not a *verbatim* rendering of the Pāli but rather a commentary, setting forth the meaning as understood by the author and his time. The Pāli differs in the wording considerably from the corresponding passages in the *Manu Wonnana*, the *Manu Sāra*, and *Wagaru*.

Mohavicch. (1).—Māte pītari putto tu, labheyya pītu thāniyo,
Hatthiassakalankare, khetti khaggādike pi ca.

Manu Sāra.—Tatta kho pītari māte, mātu puttehi vuccate,
Ce pītubhāram āvaho, sapitunā sidharitam.
So va pītuparibhogam, hatti assañ ca purisā,
Vattādi khettakañ c' eva, vatthum labhetha pathamam.

Manu Wonnana.—Paccha pītari câvite, pītu ce bhāram āvaho,
Sapitunā sidharitam, paribhogañ ca kuñcaram.
Assam vāttādi khettakam, vatthum labheyya patthamam,
Mekhalam kuṇḍalādikam, hatthalankāravāhanam.

Wagaru.—Ye pitā māte, orasaputto pitu paribhogam dāse hatthiassagomahimse labhate,

The *metrical* forms of the Pāli text of the three first Dhammathats originated with their respective authors or revisers and are based in their substance on older sources which the Burmese authors got up into their present shape; they will not, I think, admit of a direct *textual* comparison with any Hindu original.

(1) Pituthānī, the father's place taken by the son; khetti, ancestral paddy land.

(2) Bhāgo, share. The Pāli text says dāsa dāsī, male and female slaves given by the father to the mother, pitarā matudinnakam, belong to the mother only and not to the son, mātā yeva no puttako.

(3) Vibhāgo, division of property; alankārādikam (property) beginning with ornaments, etc. The English translation from the Burmese, and "such quantity of paddy, corn, and grain as would be considered reasonable," is given in Pāli by anurūpadhaññamāsake. Dhaññam comprizes seven kinds of grain: sāli, vīhi, yavo, godhūmo, kangu, varako, kudrūso.

Dhītu mātuvibhāgo, division (of property) between daughter and mother.

(4) Pītu puttavibhāgo, division (of property) between father and son. The property which goes to the son is thus given in the Pāli:—

Pītu puttavibhāge tu, mātā pītuhi dinnakam.
Dve gomahimsayugāni, tayo yuddha-eḷake.
Vīsajīyo ca dhenvekam, idam labheyya puttako.

(5) Pītudhītuvibhāgo, division (of property) between father and daughter.

(6) Jeṭṭhiko, the eldest son; majjhimo, the "middle" or younger son; kaniṭṭho, the youngest son. In Pāli the respective terms mean both sons and daughters.

The eldest son and eldest daughter shall receive bullocks and buffaloes in addition is given in Pāli thus: "Gvādikam adhikam jeṭṭho."

(Sons and daughters) who have not yet been married before: avivāhitapubbe; who have already been married before and live separately: sandhāyane 'tare.

(7) N'oraso jeṭṭhadhītâpi, kaniṭṭhena samam labhe.
Sace pana dhītā va, jeṭṭhā jeṭṭhânunīpakam.

(9) Jānikāro, causing loss; na pumsako, wanting virility, not (being) a male; ahāpayye, should be forfeited; this a much stronger term than the Burmese rendering (ရှိစေလျှင်) and the English translation "make less."

(10) Dāyajjam, inheritance; so 'dhikam yeva dāyajjam khādayye: he should obtain (*lit.* eat) a greater portion of the inheritance; putto is here used to signify "child," whether male or female.

(12) Sagharam, the house (and its belongings?), or the house remains with the younger son, kaniṭṭho tu sagharam yeva so labhe.

(13) Anopaddavadinno, what is given against distress or to facilitate recovery. This is a Pāli term, which but approximately gives the meaning of the Burmese superstitious custom of ဘေးငြိမ်းသည်. This expression is not a translation of ano (ava) paddavadinno, but the latter term appears to have been quite recently selected from the Pāli vocabulary to secure a classical though inadequate equivalent for the Burmese khāmai.

(14) Criminal punishment, rājadaṇḍa.

(16) Vivāhe dinnakam bhaṇḍam, property given at the time of marriage; sakapaññāya laddham (bhaṇḍam) pātekkam na bhijjayam, (property) obtained by one's own skill (or wisdom) is separate (pātekkam) and should not be divided.

This gāthā is an instance, as far as the meaning is concerned, of the close relationship with Hindu enactments. Vyāsa says: "That which is acquired by learning or by valour or received as sāndāyika (a nuptial gift from affectionate kindred) belongs at the time of partition to him (who acquired it) and shall not be claimed by coheirs"; yet the wording of the Pāli gāthā and the technical terms employed make it more than doubtful that it was ever translated from or construed upon the Sanscrit text of Vyāsa.

Virāhe dinnakam bhaṇḍam, mātamittehi dinnakam.
Sakapaññāya laddhan ca, pātekkam va na bhijjayam.

18. Aposāposayutto, one whose duties it is to feed and take care (of a person) but does not do it.

19. Thapeyyum avibhāge va, dānatthāya iṇāya ca.
Avivāhitaputtānam, vivāhakaranāya ca.

Dānatthāya iṇāya ca, for religious purpose and (liquidation of) debts

20. Dāyajjakhādanarāho, a person entitled to inheritance; tabbhāgo, his (or such a) portion; gabbheyya occurs repeatedly for gaccheyya.

22. Hatthagata*m* dhana*m*, property taken possession of (*lit.* which has come to hand).

23. Avivāhena yujjantesu, living together without tho marriage act having been performed; sasantako, property belonging to the family (which parents can reclaim); tehi katabhandaka*m*, property acquired by themselves.

24. Nānāvāsitthiposesu (among) man and woman who live separately.

25. Niyyādita*m* dhana*m*, property restored or made over; vadhū, a daughter-in-law; sassurā, father and mother-in-law; vibhajati, to divide (property).

26. Pume mate aputte tu, khādeyy' itthi'nuyagata*m*.
Khettan tu ta*m* kaniṭṭho va, tattha matāya itthiyā.

Anuyagata*m* (dhanam), (property) descended or inherited from ancestors. The Pāli text says that only the younger brother shall succeed to such property.

27. Purisena palāyitvā, putte jāte pume mate.
Sadāsena vivāhetvā jāto puṭṭo va oraso.

"If (a woman) runs away with a man and the man dies after sons "have been born, that son only is the awratha which has (subsequently) "been procreated upon her by a slave appointed in marriage to her."

(28) Itthimutta, a free woman; pumādaso, a male slave, the male being a slave.

(29) Oraso heṭṭhimo c'eva, khettajo tīsu oraso,
Chattaro heṭṭhimo eka*m*, khettajo aḍḍhaka*m* labhe.

(30) Dāsajjo, slave born; pubbaputto, the son of a former marriage.

(31) The Pāli text says (property may be) given or not given, dinnam adinna*m*.

(32) Itthi*m* vikiṇitvā ce jāya*m* kare, having bought a woman and if he appoints her as a wife.

(33) Dve jāyikapumo, a man having two wives; uttamā, the superior (wife), hinakājāyā, the inferior wife (also hinajājā); aputtakā, having no children; saputtakā, having children; hinuttamānurūpaka*m*, in accordance with superiority or inferiority (of wifes and their issue).

(34) Pañcajāyapume naṭṭhe, labheyya pañcakhattiyā,
Senāpati ca jāyā ca, cattāro vippajātikā;
Seṭṭhikulā tayo bhāge, suddhajātikā dve bhāge,
Iti jātivasen' eva, vibhajjayya vicakkhaṇo.

Vippajātika, a Brahmanic wife; suddhajātikā, translated in the Burmese "a woman of poor people, descended from low parentage"; suddhajātika means "a pure born woman." No doubt we have here the original 'sūdra' before us, which neither in its Sanscrit or Pāli form (sudda) was understood by the author, who substituted suddha for it as conveying at least some meaning.

(35) Sa*m*yujjitvā, living in conjugal bond; pacchimabhaṇḍam, property acquired subsequently (after the second marriage); cūḷamā-

tā, step-mother; navaputtako, son of the second marriage; pubbaputto, son of a former marriage; pubbadhanam (ဓနဟိုဗ္ဗော), property acquired before (the second marriage), also pubbakam dhanam; for rbhāgo, portion, koṭṭhāso is occasionally used; mahācūḷakajāyā, superior and inferior wives (မဟေဿီယဓီးဘဲငယ်).

(36) Sakucchiko tu sabbo pi, dāyajjaṃ eva khādayye.
Nātākā tamhi naṭṭhe tu, tesu naṭṭhesu rājikam.

Sakucchiko, uterine brother or sister:
Sattadasamo dāyajjaṭṭho niṭṭhito.